

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**A.H., Appellant** )

**and** )

**U.S. POSTAL SERVICE, POST OFFICE,** )  
**Gastonia, NC, Employer** )  
\_\_\_\_\_ )

**Docket No. 20-1608**  
**Issued: January 20, 2022**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On September 8, 2020 appellant filed a timely appeal from a May 27, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish more than 33 percent permanent impairment of the penis, 73 percent permanent impairment of the left testicle and 60

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the May 27, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

percent permanent impairment of the right testicle, for which he previously received schedule award compensation.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 6, 2010 appellant, then a 44-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 4, 2010 he sustained injuries after slipping on a wet floor and hitting his groin on a chair. OWCP accepted the claim for genital organ contusion, scrotal varices, impotence of organic origin, and unspecified orchitis and epididymitis.

On February 28, 2014 appellant filed a claim for a schedule award (Form CA-7).

By decision dated May 12, 2014, OWCP granted appellant a schedule award for 33 percent permanent impairment of the penis. The period of the award was for 67.65 weeks and ran from May 8, 2013 to August 24, 2014.

By decision dated December 8, 2014, OWCP granted appellant a schedule award for 33 percent permanent impairment of the right testicle. The period of the award was for 17.16 weeks and ran from August 25 through December 23, 2014.

By decision dated May 17, 2016, OWCP granted appellant a schedule award for five percent permanent impairment of the left testicle. The period of the award was for 2.60 weeks and ran from December 24, 2014 through January 11, 2015.

On July 5, 2016 appellant requested reconsideration of the May 17, 2016 OWCP decision. By decision dated July 14, 2016, OWCP denied his request for reconsideration.

On July 26, 2016 appellant filed a timely appeal to the Board. By decision dated February 7, 2017, the Board set aside the May 17 and July 14, 2016 decisions of OWCP and remanded the case for an appropriate permanent impairment rating using the conversion method set forth in the FECA Procedure Manual.

In an April 21, 2017 report, OWCP's district medical advisor (DMA), Dr. David I. Krohn, Board-certified in internal medicine, reviewed the statement of accepted facts (SOAF), and appellant's medical record. He thereafter applied the conversion chart contained in the FECA Procedure Manual as instructed by the Board.<sup>4</sup> The DMA determined that appellant had 11 percent whole person impairment for the left testicle using Table 7-8, page 147 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>5</sup> In reaching this determination, he assigned a class of diagnosis (CDX) of 2 or nine percent whole person

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<sup>3</sup> Docket No. 16-1537 (issued February 7, 2017).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(d)(2)(a) (January 2010).

<sup>5</sup> A.M.A. *Guides* (6<sup>th</sup> ed. 2009).

impairment for moderate detectable hormonal abnormalities. Appellant's continuous symptoms, despite treatment, moved the rating one position to the right, resulting in 11 percent whole person impairment of the left testicle. Next, OWCP's DMA applied the conversion table found in the FECA Procedure Manual ( $11/15 = x/100$ ) to find 73 percent permanent impairment of the left testicle.<sup>6</sup> Using Table 7-8, page 147, he determined that appellant had nine percent whole person impairment for the right testicle. In reaching this determination, OWCP's DMA assigned a CDX of 2 or nine percent whole person impairment, with no evidence of symptoms or signs to move the rating from the default position. He then applied the conversion table found in the FECA Procedure Manual ( $9/15 = x/100$ ) to find 60 percent permanent impairment of the right testicle.<sup>7</sup> Using Table 7-6, page 144, OWCP's DMA determined that appellant had five percent whole person impairment of the penis. In reaching this determination, he assigned a CDX of 1 or three percent whole person impairment based on sexual function possible with varying degrees of difficulty with erection responsive to medical treatment. Appellant's moderate testing abnormalities resulted in movement one position to the right, resulting in five percent whole person impairment. Lastly, OWCP's DMA applied the conversion table found in the FECA Procedure Manual ( $5/15 = x/100$ ) to find 33 percent permanent impairment of the penis.<sup>8</sup>

By decision dated May 1, 2017, OWCP granted appellant a schedule award for an additional 68 percent permanent impairment of the left testicle and an additional 27 percent permanent impairment of the right testicle. The period of the award was for 49.40 weeks and ran from January 12 through December 23, 2015.

On May 15, 2017 appellant requested reconsideration.

By decision dated May 18, 2017, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a) as he failed to submit any new and relevant evidence or legal argument.

On September 22, 2017 appellant filed a claim for an additional schedule award (Form CA-7) for permanent impairment of the penis.

OWCP received a September 20, 2017 report from Dr. David A. Nachamie, a treating physician specializing in urology. Dr. Nachamie diagnosed erectile dysfunction, injury to genitalia, and low testosterone. Appellant complained of some left testicle discomfort and swelling and noted that medication helps with his erectile dysfunction.

In a letter dated October 11, 2017, Dr. Nachamie, advised that appellant appeared to have reached maximum medical improvement as of May 8, 2013. He diagnosed erectile dysfunction, low testosterone, and intermittent swelling and pain in his left testicle. Dr. Nachamie related that he was not qualified to provide a permanent impairment rating.

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<sup>6</sup> *Supra* note 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

On October 31, 2017 OWCP requested clarification from OWCP's DMA as to whether the medical evidence submitted since his April 21, 2017 review entitled appellant to an additional schedule award for his accepted conditions. In a report dated December 7, 2017, OWCP's DMA reviewed Dr. Nachamie's September 20 and October 11, 2017 reports and found no basis for an additional schedule award.

By decision dated December 11, 2017, OWCP denied appellant's request for an additional schedule award.

In a report dated May 9, 2018, Dr. Michael Pryor, Board-certified urologist, noted diagnoses including impotence, erectile dysfunction due to arterial insufficiency, testicular hypogonadism, testicular hypofunction, and hypercholesterolemia. He, in a February 18, 2019 progress report, noted that appellant sustained an employment-related injury to his penis and genitals. Dr. Pryor attributed appellant's erectile dysfunction to arterial insufficiency.

In a July 22, 2019 report, Dr. Matthew A. Creighton, a Board-certified urologist, noted that appellant was seen for complaints of erectile/sexual dysfunction and scrotal pain.

On October 8, 2019 appellant filed another claim for an additional schedule award (Form CA-7).

In a letter dated November 1, 2019, appellant requested that OWCP refer him for a second opinion evaluation to determine a permanent impairment rating for his penis.

OWCP thereafter referred appellant, together with a SOAF, list of questions, and medical record, for a second opinion evaluation with Dr. Theodore Stamatakos, a Board-certified urologist, to determine entitlement to an additional schedule award.

In a February 11, 2020 report, Dr. Stamatakos noted appellant's history of injury and provided examination findings. Using Table 7-8, page 147 of the A.M.A., *Guides*, Dr. Stamatakos assigned a CDX 2 or nine percent whole person impairment for the left testicle based on complaints of recurrent left scrotal pain and moderate hormonal abnormalities. Applying the conversion table found in the FECA Procedure Manual ( $9/15 = x/100$ ) to find 60 percent permanent impairment of the left testicle.<sup>9</sup> Next, Dr. Stamatakos, using Table 7-8, page 147, assigned a CDX 2 or nine percent impairment for the right testicle based on recurrent right scrotal pain and moderate hormonal abnormalities. He then applied the conversion table found in the FECA Procedure Manual ( $9/15 = x/100$ ) to find 60 percent permanent impairment of the right testicle.<sup>10</sup> Lastly, Dr. Stamatakos used Table 7-6, page 144 to determine that appellant had three percent whole person impairment of the penis. In reaching this determination, he assigned a CDX 1 or three percent whole person impairment based on a history of erectile dysfunction responsive to oral medication and moderate testing abnormalities. Dr. Stamatakos applied the conversion table

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

found in the FECA Procedure Manual ( $3/15 = x/100$ ) to find 20 percent permanent impairment of the penis.<sup>11</sup>

In a March 6, 2020 addendum, Dr. Stamatakos determined that appellant had nine percent whole person impairment of his left testicle and nine percent whole person impairment of his right testicle. He further determined that appellant had five percent whole person impairment of his penis.

On April 10, 2020 OWCP forwarded the February 11, 2020 impairment rating and March 6, 2020 addendum by Dr. Stamatakos to an OWCP DMA for review. In May 22, 2020 report, OWCP's DMA reviewed Dr. Stamatakos' reports and applied the conversion table noting that Dr. Stamatakos did not apply the conversion table found in the FECA Procedure Manual in the March 6, 2020 addendum. He determined that appellant had 9 percent whole person impairment of the left testicle, which, using the conversion table found in the procedure manual, converted to 60 percent left testicle permanent impairment manual, 9 percent whole person impairment of the right testicle, which, using the conversion table found in the procedure manual, converted to 60 percent right testicle permanent impairment, and 5 percent whole person impairment of the penis, which, using the conversion table found in the FECA Procedure Manual, converted to 33 percent permanent impairment of the penis. OWCP's DMA determined that appellant was not entitled to an additional schedule award as appellant had previously been granted a schedule award for 73 percent permanent of the left testicle, 60 percent permanent impairment of the right testicle, and 33 percent permanent impairment of the penis.

By decision dated May 27, 2020, OWCP denied appellant's request for an increased schedule award.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>12</sup> and its implementing regulations<sup>13</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants and the Board has concurred in such adoption.<sup>14</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.<sup>15</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *Supra* note 1 at § 8107.

<sup>13</sup> 20 C.F.R. § 10.404.

<sup>14</sup> *Id.* at § 10.404(a); *see also T.T.*, Docket No. 18-1622 (issued May 14, 2019); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>15</sup> *Supra* note 4 at Chapter 2.808.5(a) (March 2017); *see also id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

No schedule award is payable for a member, function, or organ of the body that is not specified in FECA or the implementing regulations.<sup>16</sup> The list of scheduled members includes the eye, arm, hand, fingers, leg, foot, and toes.<sup>17</sup> Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.<sup>18</sup> By authority granted under FECA, the Secretary of Labor expanded the list of scheduled members to include the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina, and skin.<sup>19</sup>

OWCP's procedures provide a formula to measure the percentage of impairment of an organ when the whole person impairment is provided. The whole person impairment of the claimant, identified as A, is divided by B, the maximum impairment of the organ, which equals X, the impairment rating, divided by 100. For organs such as the penis, which have more than one physiologic function, the A.M.A., *Guides* provides whole person impairment levels for each function. When calculating the impairment of these organs, OWCP's medical adviser must consider all functions as instructed in the A.M.A., *Guides*. The maximum whole person impairment ascribed to the particular organ (B) is obtained by combining the maximum levels for all functions using the Combined Values Chart in the current edition of the A.M.A., *Guides*.<sup>20</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of permanent impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.<sup>21</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish more than 33 percent permanent impairment of the penis, 73 percent permanent impairment of the left testicle and 60 percent permanent impairment of the right testicle, for which he previously received schedule award compensation.

In a February 11, 2020 report, Dr. Stamatakos used Table 7-8, page 147 of the A.M.A., *Guides*, to find a nine percent whole person impairment for the left testicle and a nine percent permanent impairment for the right testicle. He applied the conversion table found in the FECA Procedure Manual ( $9/15 = x/100$ ) to find 60 percent permanent impairment of the left testicle and right testicle. Next, Dr. Stamatakos used Table 7-6, page 144 to determine that appellant had a

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<sup>16</sup> *M.M.*, Docket No. 17-0197 (issued May 1, 2018); *W.C.*, 59 ECAB 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

<sup>17</sup> *Supra* note 1 at § 8107(c).

<sup>18</sup> *Id.*

<sup>19</sup> *Supra* note 13 at § 10.404(b).

<sup>20</sup> *See supra* note 4 at Chapter 3.700.4(d)(2)(b)(January 2010).

<sup>21</sup> *See supra* note 4 at Chapter 2.808.6(f) (March 2017).

three percent whole person impairment of the penis. Next, he used the conversion table found in the FECA Procedure Manual ( $3/15 = x/100$ ) to find 20 percent permanent impairment of the penis.

In a March 6, 2020 addendum, Dr. Stamatakos determined that appellant had a nine percent whole person impairment of his left testicle, nine percent whole person impairment of his right testicle, and a five percent whole person impairment of his penis. He further determined that appellant had five percent whole person impairment of his penis.

Consistent with its procedures, OWCP properly referred the matter to a DMA for an opinion regarding appellant's permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*.<sup>22</sup>

In a May 22, 2020 report, OWCP's DMA reviewed the medical record, including the February 11 and March 6, 2020 addendum by Dr. Stamatakos. He noted that Dr. Stamatakos did not use the conversion table in his March 6, 2020 addendum. OWCP's DMA utilized the findings by Dr. Stamatakos, the applicable tables from the A.M.A., *Guides*, and the conversion table found in the FECA procedure manual. He determined that appellant had a nine percent whole person impairment of the right and left testicles using Table 7-8, page 147. Applying the conversion table found in the FECA Procedure Manual, OWCP's DMA determined that appellant had 60 percent permanent impairment of the left testicle and 60 percent permanent impairment of the right testicle. Next, he determined that appellant had five percent whole person impairment of the penis using Table 7-6, page 144. OWCP's DMA applied the conversion table found in the FECA Procedure Manual to find 33 percent permanent impairment of the penis. He properly explained that appellant was not entitled to an additional schedule award under the A.M.A., *Guides*.

The Board finds that the DMA applied the appropriate tables of the A.M.A., *Guides* and the FECA Procedure Manual conversion table to Dr. Stamatakos' examination findings and properly calculated 60 percent permanent impairment of the left testicle, 60 percent permanent impairment of the right testicle, and a 33 percent permanent impairment of the penis. As there is no medical evidence of record in conformance with the sixth edition of the A.M.A., *Guides* and the FECA Procedure Manual conversion table, establishing that appellant has greater than the 73 percent permanent impairment of the left testicle, 60 percent permanent impairment of the right testicle, and 33 percent permanent impairment of the penis previously awarded, the Board finds that he has not met his burden of proof to establish that he is entitled to additional schedule award compensation.<sup>23</sup>

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

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<sup>22</sup> *E.W.*, Docket No. 19-1720 (issued November 25, 2020).

<sup>23</sup> *See J.S.*, Docket No. 20-0739 (issued November 13, 2020).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish greater than 33 percent permanent impairment of the penis, 73 percent permanent impairment of the left testicle, and 60 percent permanent impairment of the right testicle, for which he previously received schedule award compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board