

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

<hr/>)	
M.K., Appellant)	
)	
and)	Docket No. 22-0397
)	Issued: August 18, 2023
U.S. POSTAL SERVICE, MARGATE POST)	
OFFICE, Margate, FL, Employer)	
<hr/>)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 21, 2022 appellant filed a timely appeal from a January 11, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish a permanent impairment of a scheduled member or function of the body, warranting a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 11, 2022 decision, appellant submitted additional evidence to OWCP. 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.*

FACTUAL HISTORY

On September 4, 1997 appellant, then a 33-year-old part-time flexible carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 3, 1997 he slipped off the step of a long-life vehicle and landed on his right knee while in the performance of duty. OWCP accepted the claim for a right hip/thigh contusion and right knee medial meniscus tear.

On May 5, 1998 Dr. Harold S. Reitman, a Board-certified orthopedic surgeon, performed an arthroscopy and medial femoral condyle chondroplasty of the right knee.

In a form report dated January 25, 1999, Dr. Reitman indicated that appellant had reached maximum medical improvement (MMI) on that date with regard to the accepted September 3, 1997 employment injury.

On September 20, 2012 Dr. Rena Amro, a Board-certified orthopedic surgeon, performed an arthroscopy of the right knee, partial medial and lateral meniscectomy, drilling of medial femoral condyle, synovectomy of medial, lateral, and patellofemoral joints, removal of loose body, chondroplasty of patellofemoral joint and lateral tibial plateau, plica removal, and anterior cruciate ligament shrinkage.

On October 6, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated December 6, 2021, OWCP requested that appellant submit a detailed medical report from his physician addressing his permanent impairment due to his accepted employment injury in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ It afforded him 30 days to submit the requested information. OWCP advised appellant that, if his physician was unable to provide such a report, he should notify it in writing and, if the evidence showed a work-related permanent impairment of a scheduled member that, was insufficient to determine the extent of permanent impairment, it would refer him for a second opinion examination.

In response to the development letter, appellant submitted a substantially illegible and unsigned document titled "Surgical Information."

By decision dated January 11, 2022, OWCP denied appellant's schedule award claim as he failed to establish a permanent impairment of a scheduled member or function of the body.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁴ and its implementing federal regulations,⁵ set forth the number of weeks of compensation payable to employees sustaining permanent

³ A.M.A., *Guides* (6th ed. 2009).

⁴ 5 U.S.C. § 8107(c).

⁵ 20 C.F.R. § 10.404.

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 loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.⁶ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.⁷

It is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of an employment injury.⁸ OWCP's procedures provide that, to support a schedule award, the file must contain competent medical evidence, which shows that the impairment has reached a permanent and fixed state and indicates that the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.⁹ Its procedures further provide that, if a claimant has not submitted a permanent impairment evaluation, it should request a detailed report that includes a discussion of how the impairment rating was calculated.¹⁰ If the claimant does not provide an impairment evaluation and there is no indication of permanent impairment in the medical evidence of file, the claims examiner may proceed with a formal denial of the award.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a permanent impairment of a scheduled member or function of the body, warranting a schedule award.

On October 6, 2020 appellant requested a schedule award. OWCP, in a December 6, 2021 development letter, requested that he submit a permanent impairment evaluation from his physician addressing the extent of any employment-related permanent impairment using the sixth edition of the A.M.A., *Guides*. Appellant submitted a document titled "Surgical Information." However, in addition to the fact that the document is substantially illegible, it is unsigned and the

⁶ For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Chapter 3.700, Exhibit 1 (January 2010).

⁷ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁸ *See Y.M.*, Docket No. 21-0995 (issued March 2, 2022); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁹ *See supra* note 6 at Chapter 2.808.5b; *see also D.J.*, Docket No. 20-0017 (issued August 31, 2021); *B.V.*, Docket No. 17-0656 (issued March 13, 2018); *C.B.*, Docket No. 16-0060 (issued February 2, 2016); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

¹⁰ *Id.* at Chapter 2.808.6a.

¹¹ *Id.* at Chapter 2.808.6c.

Board has held that an unsigned report cannot be considered probative medical evidence because it does not provide an indication that the person completing the report qualifies as a physician under FECA.¹²

The most recent medical evidence of record is an operative report dated September 20, 2012 from Dr. Amro. She did not, however, address whether appellant had reached MMI or find that he had permanent impairment due to his accepted employment injury.¹³

As noted above, appellant must submit an evaluation from a physician that includes a description of impairment in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹⁴ As he has not submitted any medical evidence supporting permanent impairment of a scheduled member or function of the body due to his accepted conditions, the Board finds that he has not met his burden of proof.¹⁵

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a permanent impairment of a scheduled member or function of the body, warranting a schedule award.

¹² *B.S.*, Docket No. 22-0918 (issued August 29, 2022); *see S.D.*, Docket No. 21-0292 (issued June 29, 2021); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹³ *See K.J.*, Docket No. 19-1492 (issued February 26, 2020); *K.F.*, Docket No. 18-1517 (issued October 9, 2019) (finding that the claimant did not meet her burden of proof in that she failed to submit medical evidence supporting permanent impairment due to the accepted employment injury).

¹⁴ *See D.J.*, Docket No. 20-0017 (issued August 31, 2021); *B.V.*, Docket No. 17-0656 (issued March 13, 2018); *C.B.*, Docket No. 16-0060 (issued February 2, 2016); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

¹⁵ *See A.M.*, Docket No. 21-1413 (issued March 28, 2022).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2023
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board