

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

_____)
M.H., Appellant)

and)

**U.S. POSTAL SERVICE, JACKSON POST
OFFICE, Jackson, MS, Employer**)
_____)

**Docket No. 24-0872
Issued: October 29, 2024**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 27, 2024 appellant filed a timely appeal from a July 9, 2024 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 her burden of proof to establish permanent impairment of her right or left upper extremity, warranting a schedule award.

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¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 9, 2024 decision, OWCP received additional evidence. 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 October 4, 2023 appellant, then a 30-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome (CTS) as a result of factors of her federal employment, including driving power equipment. She noted that she first became aware of her condition on November 23, 2022, and realized its relationship to her federal employment on July 13, 2023. OWCP accepted the claim for right CTS and subsequently expanded its acceptance of the claim to include left CTS and bilateral cubital tunnel syndrome.

Appellant underwent right carpal tunnel release on November 21, 2023 by Dr. Mark A. Dodson, a Board-certified orthopedic hand surgeon.

In a January 3, 2024 follow-up report, Dr. Dodson noted that appellant had done well following right carpal tunnel release surgery, but continued to experience some pain. On physical examination of the right upper extremity, he documented a positive Tinel's test at the elbow, decreased sensation in the little finger, full extension and flexion of the fingers, and full range of motion of the elbow. On physical examination of the left upper extremity, Dr. Dodson noted positive Tinel's and Phalen's tests. He diagnosed bilateral CTS and right cubital tunnel syndrome and recommended a right elbow cubital tunnel release.

Appellant underwent right cubital tunnel release on January 9, 2024, and a left cubital tunnel ulnar nerve transposition and left carpal tunnel release on February 20, 2024.

In a follow-up report dated March 6, 2024, Dr. Dodson noted that appellant related she could move her fingers and elbow freely without pain and that she had numbness in the left little finger only. He performed a physical examination of the left upper extremity, which revealed no tenderness to palpation at the wrist or elbow, painless range of motion at all joints, and normal sensation except decreased sensation of the little finger. Dr. Dodson diagnosed left CTS and cubital syndrome and recommended follow up in four weeks.

On May 28, 2024 appellant filed a claim for compensation (Form CA-7) requesting a schedule award.

In a May 31, 2024 development letter, OWCP requested that appellant submit a medical report addressing whether she had reached maximum medical improvement (MMI) and providing a permanent impairment evaluation using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ It indicated that, to date, no medical evidence had been received in support of her claim for a schedule award. OWCP advised that, if appellant's physician was unable or unwilling to provide the required report, to notify it in writing and if her case met the essential elements for a schedule award claim, she would be scheduled to be seen by a second opinion specialist. It afforded her 30 days to submit the necessary medical evidence. No response was received.

By decision dated July 9, 2024, OWCP denied appellant's claim for a schedule award.

³ A.M.A., *Guides* (6th ed 2009).

LEGAL PRECEDENT

The schedule award provisions of FECA⁴ and its implementing regulations⁵ 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. OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants. As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

In addressing impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated.⁷ After a class of diagnosis (CDX) is determined (including identification of a default grade value), the impairment class is then adjusted by grade modifiers based on a grade modifier for functional history (GMFH), grade modifier for physical examination (GMPE), and/or grade modifier for clinical studies (GMCS).⁸ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁹

It is the claimant's burden of proof to establish permanent impairment of the scheduled member or function of the body as a result of an employment injury.¹⁰ 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 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*.¹¹ 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.¹² 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.¹³

⁴ *Supra* note 1.

⁵ 20 C.F.R. § 10.404.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a. (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁷ *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *T.T.*, Docket No. 18-1622 (issued May 14, 2019).

⁸ A.M.A., *Guides* 383-492; *see M.P.*, Docket No. 13-2087 (issued April 8, 2014).

⁹ *Id.* at 411.

¹⁰ *E.D.*, Docket No. 19-1562 (issued March 3, 2020); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹¹ *Supra* note 6 at Chapter 2.808.5 (March 2017).

¹² *Id.* at Chapter 2.808.6a (March 2017).

¹³ *Id.*

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish permanent impairment of her right or left upper extremity, warranting a schedule award.

In reports dated November 21, 2023 through March 6, 2024, Dr. Dodson documented surgical procedures and postoperative treatment that appellant received for bilateral CTS and bilateral cubital tunnel syndrome. However, he did not relate that she had reached MMI or that she had permanent impairment of either upper extremity in accordance with the A.M.A., *Guides*. Therefore, Dr. Dodson's opinions are insufficient to establish appellant's schedule award claim.¹⁴

On May 28, 2024 appellant filed a Form CA-7 claim for a schedule award. OWCP, on May 31, 2023, requested that she submit a permanent impairment evaluation from her physician addressing the date of MMI and extent of any employment-related permanent impairment using the A.M.A., *Guides*. Appellant, however, did not submit the requested medical evidence.

As noted above, appellant must submit an evaluation from a physician that supports a finding that she has reached MMI, and which 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.¹⁵

As the medical evidence of record is insufficient to establish permanent impairment of a scheduled member or function of the body, the Board finds that appellant has not met her burden of proof.¹⁶

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 her burden of proof to establish permanent impairment of her right or left upper extremity, warranting a schedule award.

¹⁴ See *P.M.*, Docket No. 24-0057 (issued April 15, 2024).

¹⁵ *N.A.*, Docket No. 23-0532 (issued January 24, 2024); see *J.P.*, Docket No. 21-0801 (issued December 22, 2021); *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).

¹⁶ See *L.L.*, Docket No. 24-0517 (issued June 18, 2024).

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 29, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy 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