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R.S., Appellant)	
)	
and)	Docket No. 24-0642
)	Issued: January 31, 2025
DEPARTMENT OF THE AIR FORCE, TINKER)	
AIR FORCE BASE, Tinker, OK, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge

² The Board notes that, following the May 24, 2024 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

This case has previously been before the Board on a different issue.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference.

On December 10, 2020 appellant, then a 59-year-old production machinery mechanic, filed an occupational disease claim (Form CA-2) alleging that he developed cancer due to factors of his federal employment, including exposure to heavy metals such as chromium and cadmium. He noted that he first became aware of his condition on July 28, 2020 and realized its relation to his federal employment on November 20, 2020.

On December 13, 2022 OWCP accepted the claim for marginal zone lymphoma.

In a January 30, 2023 report, Dr. M. Stephen Wilson, a Board-certified orthopedic surgeon, recounted a history of the occupational condition and treatment. He referenced Table 9-13 (Criteria for Rating Impairment due to Lymphoma and Metastatic Disease), page 209 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)⁴ to find a Class 3 impairment caused by marginal zone lymphoma, to equal a 35 percent whole person impairment.

In a June 15, 2023 report, Dr. Wilson diagnosed a pulmonary embolism due to complications of surgical and medical care, malignant neoplasm of right kidney and renal pelvis/ureter, malignant neoplasm of left kidney, neoplastic/malignant related fatigue, and disorder of urinary system. He opined that the additional conditions were related to the accepted condition of marginal zone lymphoma.⁵

On June 21, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated July 14, 2023, OWCP requested that appellant submit an impairment evaluation from his attending physician addressing whether he had reached maximum medical improvement (MMI), the diagnosis on which impairment is based, a detailed description of all pertinent clinical findings, a comprehensive description of any permanent impairment, and an impairment rating using the A.M.A., *Guides*. It afforded him 30 days to submit the necessary evidence.

In response, OWCP received reports dated July 17, 2023 by Dr. Wilson wherein he opined that appellant reached MMI as of January 30, 2023. Dr. Wilson found a 37 percent whole person impairment based on the accepted occupational condition of marginal zone lymphoma.

On November 6, 2023 OWCP routed the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Michael Minev, an internist serving as an OWCP district

³ Docket No. 22-0087 (issued April 19, 2022).

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ Dr. Wilson reiterated this opinion in periodic reports dated September 14, 2023 through April 25, 2024.

medical adviser (DMA), to determine the appropriate percentage of permanent impairment caused by the accepted marginal zone lymphoma.

In a November 20, 2023 report, Dr. Minev referenced Table 9-13 of the A.M.A., *Guides* to find a 35 percent permanent impairment of the whole person due to marginal zone lymphoma.

On April 8, 2024 OWCP requested that Dr. Minev provide a supplemental report expressing the impairment rating as the percentage of permanent impairment to the kidneys, as there was no provision for whole person impairment under FECA.

In an April 22, 2024 report, Dr. Minev indicated that as marginal zone lymphoma was a malignancy of the hematologic system, it was “not possible to express the impairment rating due to [m]arginal [z]one [l]ymphoma as an impairment rating of the kidneys.”

By decision dated May 24, 2024, OWCP denied appellant’s claim for a schedule award.

LEGAL PRECEDENT

The schedule award provisions of FECA⁶ and its implementing federal regulation⁷ 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. The method used in making such a determination is a matter which rests in the discretion of OWCP. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides*⁸ as the appropriate standard for evaluating schedule losses.⁹ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.¹⁰ 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.¹¹

No schedule award is payable for a member, function, or organ of the body that is not specified in FECA or the implementing regulations.¹² The list of scheduled members includes the

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ *Supra* note 4.

⁹ *Supra* note 7. See also *J.C.*, Docket No. 20-1071 (issued January 4, 2021); *Ronald R. Kraynak*, 53 ECAB 130 (2001).

¹⁰ See 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, Exhibit 1 (January 2010).

¹¹ *J.C.*, *supra* note 9; *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

¹² *R.S.*, Docket No. 23-1063 (issued February 9, 2024); *D.K.*, Docket No. 21-0303 (issued July 8, 2021); *D.L.*, Docket No. 20-0059 (issued July 8, 2020); *W.C.*, 59 ECAB 374 (2008); *Anna V. Burke*, 57 ECAB 521 (2006).

eye, arm, hand, fingers, leg, foot, and toes.¹³ Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.¹⁴ 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.¹⁵ Neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the body as a whole.¹⁶

ANALYSIS

The Board finds that this case is not in posture for decision.

In a January 30, 2023 report, Dr. Wilson referenced Table 9-13 of the sixth edition of the A.M.A., *Guides* to find a Class 3 impairment caused by marginal zone lymphoma, to equal a 35 percent whole person impairment. In a July 17, 2023 report, he indicated that appellant reached MMI, and had a 37 percent whole person impairment due to the accepted marginal zone lymphoma.

In a November 20, 2023 report, Dr. Minev, the DMA, found a 35 percent permanent impairment of the whole person due to marginal zone lymphoma. OWCP subsequently requested that Dr. Minev provide a supplemental report expressing the impairment rating as the percentage of permanent impairment to the kidneys, as there was no provision for whole person impairment under FECA. In a supplemental report dated April 22, 2024, Dr. Minev indicated that the accepted condition was a hematologic malignancy, which could not be expressed as an impairment of the kidneys. However, he did not offer a sufficient explanation as to why there would be no permanent impairment of a scheduled member or function of the body.

The Board finds that the medical opinion of the DMA remains unclear with regard to the medical reasoning as to an explanation of the absence of a permanent impairment of a scheduled member or function of the body.

Proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter.¹⁷ The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁸ Once

¹³ 5 U.S.C. § 8107(c).

¹⁴ *Id.*

¹⁵ *Id.* at § 8107(c)(22); 20 C.F.R. § 10.404(a).

¹⁶ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *M.H., id.*; *see N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

¹⁷ *T.L.*, Docket No. 24-0541 (issued June 28, 2024); *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

¹⁸ *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁹

On remand, OWCP shall refer appellant, along with the SOAF and the case record, to a second opinion physician in the appropriate field of medicine consistent with OWCP's procedures. The second opinion physician shall provide a well-rationalized opinion as to whether appellant had any permanent impairment of the kidney and/or any other permanent impairment of a scheduled member. After this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2024 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.²⁰

Issued: January 31, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁹ *L.N.*, Docket No. 22-0497 (issued September 14, 2023); *G.M.*, Docket No. 19-1931 (issued May 28, 2020); *W.W.*, Docket No. 18-0093 (issued October 9, 2018).

²⁰ James D. McGinley, Alternate Judge, participated in the preparation of this decision, but was no longer a member of the Board effective January 12, 2025.