Provisions of the Federal Employees’ Compensation Act (FECA)

- Medical Coverage
- Continuation of Pay
- Compensation for Total/Partial Lost Wages
- Schedule Awards
- Vocational Rehabilitation
- Death/Burial Expenses
The schedule award provisions at § 8107 (c) of FECA specify the number of weeks of compensation to be paid for permanent loss or loss of use of the member of the body so listed in the schedule. FECA provides explicit authority for the Secretary of Labor (OWCP) to add additional schedule members.

Schedule Benefits Payable

Under 8107 (c)
- Arm, Hand, Fingers
- Leg, Foot, Toes
- Eye
- Hearing Loss
- Facial Disfigurement

Added By Regulation
- Lung, Larynx
- Kidney, Tongue
- Male/Female organs: Penis, testicle, ovary, uterus/cervix, vulva/vagina, breast
- Skin added by 2011 regulations

The statute or regulation specifies the number of weeks paid up to 312. (Except disfigurement—$3500) Schedule benefits are claimed on a CA-7.

A schedule award is not payable for the loss or loss of use of any member of the body or function not specifically enumerated in § 8107 of the FECA or its implementing regulations at 20 CFR Part 10.
Inclusions...

- A schedule award compensates for the loss of or the loss of use of a schedule member.
- A schedule is payable only where the medical evidence establishes a permanent impairment due to an employment injury and/or occupational exposure.
- Once an employment-related impairment is found, all impairment of the schedule member is included, including preexisting and non-employment related impairment. ECAB stated in Raymond Gwynn, 35 ECAB 247 (1983) (citing Larson) that “the employer takes the employee as he finds him.”

Exclusions

- While § 8107 (22) allows the Secretary of Labor to add to the list of organs for which a schedule award may be paid, the clear language of § 8101 (19) prohibits the addition of the back to the schedule provisions, as § 8101 (19) defines “organ” as meaning “a part of the body that performs a special function, and for purposes of this subchapter excludes the brain, heart, and back.”
- The FECA does not provide for a schedule award for whole body impairment. See John Iaia, 48 ECAB 243 (1996).

Medical Evidence

- Claimant has the burden to claim benefits and submit medicals.
- OWCP may undertake development in schedule award cases by using OWCP medical consultants, second opinion physicians and impartial specialists if needed to determine entitlement to an award.
When is a Schedule Award Paid?

- A schedule award is not paid until a claimant has reached maximum medical improvement (MMI).
- The date of maximum medical improvement is generally the date that a schedule award commences.
- MMI may be the date that the medical examination on which the schedule award calculation is based.
- A schedule award must be specifically claimed during the employee’s life; schedule awards claimed but unpaid at death may be paid under section 8109 if the employee dies from a cause unrelated to his injury.

Maximum Medical Improvement

- Maximum medical improvement (MMI) is determined to be the date "from which further recovery or deterioration is not anticipated...over time there may be some expected change." See M.H., Docket No. 09-1888 (7/6/10). [Eventual improvement in appellant’s range of motion did not supersede 2006 finding of MMI.]
- In cases where the individual declines surgical intervention or other therapeutic treatment, an MMI determination may still be reached as long as the physician indicates the individual is at MMI in lieu of additional treatment.
- The Guides rate only current permanent impairment. They do not afford a rating for possible future impairment.

MMI and ECAB

- According to case law, MMI is generally the date of the medical examination that OWCP finds establishes the impairment. E.E., Docket No. 11-1586 (issued March 5, 2012).
- ECAB has further noted that the pay rate for a schedule award is not the date of MMI, but is the highest of date of injury, date disability begins, or the date of a recurrence of disability. C.J., Docket No. 11-426 (issued January 11, 2012).
AMA GUIDES USED...

- FECA does not specify manner by which a schedule loss under 5 U.S.C. §107 should be determined.
- For consistent results and to ensure equal justice under the law to all claimants under the Act, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.
- DOL OWCP has used the American Medical Association’s Guides to the Evaluation of Permanent Impairment standardized tables for this purpose for more than fifty years in FECA, dating back to the first Guide for Extremities and Back published in 1958.

Sixth Edition

- In January 2008, the AMA published the Sixth Edition of the Guides. This Edition implements substantial reforms to the methodology of calculating permanent impairment.
- On May 1, 2009, in accordance with its long established practice, the DFEC moved forward to the most recent version of the Guides and generally utilizes the Sixth Edition in evaluating permanent impairment under the Guides. This change was effective for all decisions issued after May 1, 2009.
- ECAB has found OWCP’s adoption of subsequent AMA editions a matter within OWCP’s sound discretion, affirming using the date the decision is made, as opposed to the date of maximum medical improvement, as the date on which to determine which edition should be used. K.A. Docket No. 12-1210 & 13-516 (issued March 19, 2013).

6th Edition is a Paradigm Shift

- Guides’ Diagnosis based grid for each organ system and chapter is the foundation of the new methodology.
- The diagnosis representing the source of the most impairment in a given body region will be used. If there is more than one ratable diagnosis in an affected extremity all regional impairments will be combined for a final impairment rating for that extremity (e.g. hand, wrist, elbow, shoulder).
Each diagnosis grid is divided into 5 classes of impairment ranked from “0” (no impairment) to “4” (very severe). Within each class are 5 severity grades categorized “A” through “E” with “C” being the default grade.

The level of severity is determined based on criteria separated into key factors and non-key factors. The criteria are:

- History of clinical presentation
- Physical findings
- Clinical studies or objective test results
- Functional history

Class of Impairment under the 6th Edition

- The key factor for a given diagnosis establishes the class of impairment (from “0” to “4”) and the non-key factors establish the severity grade (“A” through “E”).

- For example, if the accepted diagnosis is shoulder impingement syndrome the key factor is history of clinical presentation. The severity grade would then be based on functional history, physical examination and clinical studies (non-key factors).

Carpal Tunnel Syndrome

- Under the Sixth Edition of the Guides, a diagnosis of entrapment neuropathy (e.g. carpal tunnel, cubital tunnel, etc.) must be documented with nerve conduction velocity (NCV) testing in order to consider ratable impairment under the section on entrapment neuropathy.

- Preoperative electrophysiologic test should be used in the impairment rating unless a postoperative study is clearly worse than the preoperative electrophysiologic study.
Spinal Impairment under the 6th

- The 6th Edition does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment.
- In *The Guides Newsletter*, the AMA offered an approach for rating extremity impairment where spinal impairment extends there.

Special Determinations

- If conflict between *Guides* and FECA, *statute* controls
- The statute states that loss of more than one phalanx is the same as loss for the entire digit and loss of the first phalanx is one-half the compensation for loss of the entire digit. (5 U.S.C. 8107(15))
- Amputation at the wrist or ankle is considered the same as a total loss of that member. (5 U.S.C. 8107(19))
- With loss of vision, the impairment is based on the best *uncorrected* vision. (5 U.S.C. 8107(19)) Loss of binocular vision or loss of 80% or more is the same as for loss of the eye. (5 U.S.C. 8107(14))

Special Determinations (cont.)

- Total loss of a single paired organ such as one kidney, lung, breast, testicle or ovary is generally based on loss of one organ rather than loss of function of the pair.
- Respiratory impairment is generally based on the loss of use of both lungs and the impairment percentage is multiplied by twice the award for a single lung. However, for anatomical loss by injury or surgery the impairment percentage will be based on loss of lung tissue by weight or volume (including loss of the entire lung) and calculated based on the schedule for a single lung but
- A lung transplant is a 100% loss. Double lung transplant is 100% loss of both lungs.
Loss of Hearing

- A modified version of the AMA Guides was adopted to evaluate hearing loss. If there is an employment-related loss, all hearing loss (including pre-existing loss) must be compensated.
- The National Institute for Occupational Safety and Health (NIOSH) established frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps) as the criteria used for measuring hearing impairment. Since the NIOSH study did not include a method for calculating the percentage of binaural loss of hearing, that calculation is based on the method used in the AMA Guides whereby the percentage of hearing loss in the better ear is given 5 times the weight of the worse ear and the result is added to the percentage hearing loss of the worse ear and the sum divided by six.

Recalculations?

- In accordance with DFEC’s established practice when moving to an updated version of the AMA Guides, awards made prior to May 1, 2009, are not and should not be recalculated merely because a new Edition of the Guides is in use.

Claim for an Increased Award

- A claimant who received a schedule award calculated under a previous Edition of the AMA Guides who subsequently claims an increased award on or after May 1, 2009 will receive a determination with a calculation based upon the Sixth Edition. An increase may be claimed based on a claim that the original award was in error or based on new exposure.
- If that later calculation results in a percentage impairment lower than the original award (as occurs), OWCP finds the evidence does not establish an increased impairment; and that there is no basis for declaring an overpayment.
- If an agency is aware that a schedule award has previously been issued for the same member, please flag this for the CE, particularly if the earlier award was many years ago.
Schedule Awards and OPM Annuity Benefits

• The usual rule under the FECA is that if a claimant is entitled to FECA benefits and an annuity from OPM, you cannot receive both benefits—an election is required BUT

• FECA makes an exception to this rule for schedule awards—5 U.S.C. § 8116(a) permits the receipt of schedule awards concurrently with OPM benefits

Skin Schedule Award

• Skin added to schedule by 2011 regulations
  • Retroactive date to September 11, 2001 for date of injury
  • Up to 205 weeks of compensation
  • This is payable in addition to the $3,500 amount payable under § 8107(c)(21) for serious “disfigurement of the face, head or neck which is likely to handicap a person in securing or maintaining employment”
  • Disfigurement award may be paid concurrent with schedule awards including the new schedule award for the skin

Skin Award Provisions

• Accepted condition
  • Trauma
  • Disease
  • Aggravation
  • Therapy
  • Impairment
  • On job performance
  • Work exposures
Guides on the skin

- Severity
- Frequency
- Intensity
- Complexity of treatment
- Burden of Treatment Compliance (BOTC)
- Impact on ability to perform activities
- Dermatology Life Quality Index
- Dermatology Specific Quality of Life
- Skindex 29 and 17
- Dermatology Quality of Life Scale

Specific Conditions

- Atopic dermatitis
- Contact dermatitis
- Latex allergy
- Skin cancer
- Burns and scarring

Skin versus Other Impairment

- Scars impair motion across joint
  - Assessed under the orthopedic section
- Neurological impairment due to scars
  - Assessed under the neurological section
- Cosmetic scars
  - Separate disfigurement award
Review Process

- Attending physician letter
- District Medical Advisor
- Second opinion
- Referee opinion
- Final calculation
  - AMA Guides based on whole-person impairment converted to…
  - FECA award based on percentage impairment of total organ

References

- 5 U.S.C. 8101 et seq.; 20 CFR Parts 1, 10, & 25
- FECA Procedure Manual, FECA Bulletin 09-03, Program Memos (162, 181, 217 for hearing loss)
- CA-810, Injury Compensation for Federal Employees
- Decisions, Employees’ Compensation Appeals Board