

further merit review regarding a schedule award.² The Board noted that the claimant may seek an increased schedule award if the evidence establishes that she sustained an increased impairment at a later date causally related to her employment injury. The Board found that she submitted medical evidence regarding the extent of impairment at a date subsequent to the prior schedule award decision. The case was remanded for further review. In a second appeal, the Board issued a March 1, 2001 decision affirming a November 16, 1999 OWCP decision on the grounds that appellant had not established permanent impairment to any of her extremities.³

The Board next issued a decision on September 17, 2003 which affirmed OWCP decisions dated October 24, 2002, January 16 and March 7, 2003.⁴ The Board found that OWCP met its burden of proof to rescind a schedule award for a 12 percent impairment of the left leg as the record supported a 5 percent impairment of that member. The Board also found that appellant was not entitled to a schedule award for more than a 25 percent permanent impairment of her leg and did not meet her burden of proof to establish a recurrence of disability on November 15, 1993 causally related to her August 20, 1992 employment injury.

By decision dated July 16, 2004, the Board set aside a January 30, 2004 OWCP decision denying further merit review of her claim.⁵ The Board again found that OWCP had improperly considered her request for an increased schedule award as a request for reconsideration. The case was remanded for development of the increased schedule award. The Board issued a decision on June 1, 2005 affirming OWCP decisions dated October 6 and 14, 2004.⁶ The Board found that appellant had not established more than six percent left lower extremity impairment. The Board issued an order remanding case on May 15, 2009.⁷ The Board set aside a May 19, 2008 OWCP decision on the grounds that its decision was unclear as to whether it was denying appellant's claim for a recurrence of disability as it contained no discussion of the medical evidence other than noting it was insufficient. The facts and circumstances of the case as set forth in the Board's prior decisions are incorporate herein by reference.⁸

On January 10, 2010 appellant filed a claim for a schedule award.

² 51 ECAB 115 (1999).

³ Docket No. 00-845 (issued March 1, 2001).

⁴ Docket Nos. 03-1068 and 03-1342 (issued September 17, 2003). OWCP issued a schedule award for a 25 percent right leg permanent impairment on January 16, 2003 and a 5 percent left leg permanent impairment on March 7, 2003.

⁵ Docket No. 04-919 (issued July 16, 2004).

⁶ Docket No. 05-354 (issued June 1, 2005).

⁷ Docket No. 08-1623 (issued May 15, 2009).

⁸ On August 23, 1992 appellant, then a 46-year-old food service worker, filed a traumatic injury claim alleging that on August 20, 1992 she injured her back while picking up a large mixing bowl. OWCP accepted the claim for sciatica, which was subsequently expanded to include the conditions of lumbar spinal stenosis, acquired spondylolisthesis and lumbosacral spondylosis without myelopathy. Appellant resigned from the employing establishment effective February 13, 1994 and is currently not working.

On February 2, 2010 OWCP referred appellant for a second opinion examination by Dr. Bright McConnell, III, a Board-certified orthopedic surgeon, who was asked to assess her impairment in accordance with the sixth edition of the A.M.A., *Guides* and was provided a permanent impairment worksheet. In a March 3, 2010 report, Dr. McConnell noted his review of the medical evidence and provided findings on physical examination. He diagnosed lumbar spondylosis, L4-5 degenerative disc disease, lumbar stenosis and spondylolisthesis. Dr. McConnell completed the permanent impairment worksheet and advised that appellant's primary diagnosis was lumbar degenerative disc disease with subsidiary diagnoses of L4-5 spondylolisthesis and lumbar stenosis which, under Table 17-4, page 572, was class 2. He found no peripheral nerve impairment and applied the adjustment modifiers, finding a grade modifier of two for Functional History (GMFH), a grade modifier of zero for Physical Examination (GMPE) and a grade modifier of zero for Clinical Studies (GMCS), for a grade E or a 14 percent left lower extremity impairment.

On March 23, 2010 OWCP's medical adviser reviewed Dr. McConnell's report. He advised that Dr. McConnell's impairment rating was based on lumbar spine impairment which is not accepted by OWCP. OWCP's medical adviser concluded that the final impairment rating for the left lower extremity remained six percent, as this rating was based on residuals, sensory and/or motor loss resulting from lumbar spine conditions.

By decision dated April 2, 2010, OWCP found the medical evidence was insufficient to establish that appellant had greater impairment of her left leg.

On April 18, 2010 appellant requested review of the written record by OWCP's hearing representative.

By decision dated July 23, 2010, OWCP's hearing representative affirmed the April 2, 2010 decision denying appellant's request for an additional schedule award for the left lower extremity.

LEGAL PRECEDENT

The schedule award provision of FECA⁹ and its implementing regulations¹⁰ 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. 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.¹¹ Effective May 1, 2009, OWCP adopted

⁹ 5 U.S.C. § 8107.

¹⁰ 20 C.F.R. § 10.404.

¹¹ *Id.*

the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.¹²

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under FECA for injury to the spine.¹³ In 1960, amendments to FECA modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of FECA include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.¹⁴

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).¹⁵ Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.¹⁶ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁷

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through its medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.¹⁸

ANALYSIS

The record reveals that OWCP granted appellant a schedule award for a six percent impairment of the left lower extremity. The issue is whether appellant has established greater impairment due to her August 20, 1992 employment injury.

¹² Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

¹³ *D.N.*, 59 ECAB 576 (2008); *Tommy R. Martin*, 56 ECAB 273 (2005); *Pamela J. Darling*, 49 ECAB 286 (1998).

¹⁴ *D.H.*, 58 ECAB 358 (2007); *Veronica Williams*, 56 ECAB 367 (2005); *Thomas J. Engelhart*, 50 ECAB 319 (1999).

¹⁵ A.M.A., *Guides* (6th ed., 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

¹⁶ *Id.* at page 383-419.

¹⁷ *Id.* at page 411.

¹⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010). See *Frantz Ghassan*, 57 ECAB 349 (2006); *C.K.*, Docket No. 09-2371 (issued August 18, 2010).

In an impairment evaluation dated March 3, 2010, Dr. McConnell determined that appellant had 14 percent permanent impairment of the left lower extremity using Table 17-4 of the sixth edition of the A.M.A., *Guides*. Table 17-4, however, is relevant in determining impairments of the lumbar spine. FECA specifically excludes the back as an organ; therefore, the back or spine does not come under the provisions for payment of a schedule award.¹⁹

OWCP's medical adviser reviewed Dr. McConnell's report and advised that Dr. McConnell's impairment rating was based on lumbar spine impairment, noting the rating for the lumbar spine was not accepted by OWCP. He concluded, however, that the final impairment rating for the left lower extremity remained six percent as this rating had been based on residuals sensory and/or motor loss resulting from lumbar spine conditions; but he did not reference any tables in the sixth edition of the A.M.A., *Guides* or provide further elaboration for the conclusion reached.

The Board finds that the medical evidence does not contain a sufficiently reasoned medical opinion as to the degree of permanent impairment to a scheduled member or function of the body under the sixth edition of the A.M.A., *Guides*. When OWCP refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, it should secure an appropriate report on the relevant issues.²⁰

The case will be remanded to OWCP for further development of the medical evidence on whether appellant has established entitlement to an additional schedule award for her left lower extremity. After such further development as it deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision with respect to entitlement to an additional schedule award for the left lower extremity and the case is remanded for further development of the medical evidence.

¹⁹ *Patricia J. Horney*, 56 ECAB 256 (2005); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

²⁰ *See Robert Kirby*, 51 ECAB 474, 476 (2000); *Mae Z. Hackett*, 34 ECAB 1421 (1983).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 23, 2010 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: December 1, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board