

FACTUAL HISTORY

On March 14, 2011 appellant, then a 48-year-old housekeeping aid, filed a traumatic injury claim alleging that on March 7, 2011 he injured his lower back due to loading bio-hazard containers onto a cart. OWCP accepted the claim for lumbar back sprain, temporary aggravation of sacroiliac pain and temporary aggravation of preexisting chronic sacroiliac. On November 14, 2011 appellant accepted a limited-duty assignment from the employing establishment.

On October 23, 2012 appellant filed a claim for a schedule award.

By letter dated November 13, 2012, OWCP requested that appellant submit a report from a treating physician which evaluated his impairment according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a January 9, 2013 report, Dr. Matthew Jaycox, a treating Board-certified anesthesiologist, diagnosed low back pain, multilevel facet arthralgia, lumbar radicular symptoms, bilateral neuroforaminal stenosis at multiple lumbar spine levels and multilevel degenerate disc disease with posterior disc bulging. He related that appellant continued to experience a significant amount of axial back pain and that the date of maximum medical improvement was unknown. Dr. Jaycox was unable to provide an impairment rating as he did not have all the necessary information.

By decision dated March 5, 2013, OWCP denied appellant's claim for a schedule award. It found that the medical evidence did not establish that he had reached maximum medical improvement.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulation⁴ 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 regulation as the appropriate standard for evaluating schedule losses.⁵ Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁶

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

No schedule award is payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.⁷ As neither FECA nor its regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole, a claimant is not entitled to such a schedule award.⁸ The Board notes that section 8101(19) specifically excludes the back from the definition of organ.⁹ A claimant may be entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the neck, shoulders or spine.¹⁰ A schedule award is not payable for an impairment of the whole body.¹¹

The A.M.A., *Guides* explain that impairment should not be considered permanent until the clinical findings indicate that the medical condition is static and well stabilized. It is understood that an individual's condition is dynamic. Maximum medical improvement refers to a date from which further recovery or deterioration is not anticipated, although over time there may be some expected change. Once impairment has reached maximum medical improvement, a permanent impairment rating may be performed.¹²

ANALYSIS

Appellant sought a schedule award pursuant to 5 U.S.C. § 8107 for his accepted lumbar sprain, temporary aggravation of sacroiliac pain and temporary aggravation of preexisting chronic sacroiliac. The Board finds that he has not submitted sufficient medical evidence to establish that he is at maximum medical improvement.

FECA does not allow the payment of a schedule award for permanent impairment of the lumbar spine. However, a schedule award may be payable for permanent impairment of a lower extremity, if the cause of the permanent impairment is an accepted injury to the lumbar spine. Appellant submitted a January 5, 2013 report from Dr. Jaycox, but the physician advised that appellant had not yet reached maximum medical improvement. Further, he did not have all the information necessary to rate impairment.

Before a schedule award can be granted pursuant to the A.M.A., *Guides*, a description of appellant's impairment must be obtained from his physician. The description must be 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.¹³ Dr. Jaycox did not

⁷ *S.K.*, Docket No. 08-848 (issued January 26, 2009); *Thomas J. Engelhart*, 50 ECAB 319 (1999).

⁸ *See D.N.*, 59 ECAB 576 (Docket No. 07-1940, issued June 17, 2008); *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

⁹ 5 U.S.C. § 8101(19).

¹⁰ *J.Q.* 59 ECAB 366 (2008); *Thomas J. Engelhart*, *supra* note 7.

¹¹ *A.L.*, Docket No. 08-1730 (issued March 16, 2009); *N.M.*, 58 ECAB 273 (2007); *Marilyn S. Freeland*, 57 ECAB 607 (2006).

¹² A.M.A., *Guides* 19; *Patricia J. Penney-Guzman*, 55 ECAB 757 (2004).

¹³ *See D.N.*, 59 ECAB 576 (2008); *Vanessa Young*, 55 ECAB 575 (2004); *Robert B. Rozelle*, 44 ECAB 615 (1993).

provide an impairment rating as requested, rather he explained that appellant had not reached maximum medical improvement. As noted, permanent impairment may only be evaluated after an injured employee has reached maximum medical improvement. Appellant did not meet his burden of proof in this case.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof that he is entitled to a schedule award under 5 U.S.C. § 8107 as the medical evidence does not establish that he has reached maximum medical improvement.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 5, 2013 is affirmed.

Issued: December 6, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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