

FACTUAL HISTORY

Appellant, a 59-year-old aircraft electrician, was injured in an August 1, 2009 employment-related fall. OWCP accepted his claim for closed fracture of the right wrist, aggravation of (lumbar) degenerative disc disease and aggravation of lumbar intervertebral disc displacement without myelopathy. It authorized a March 28, 2011 lumbar laminectomy, discectomy and interbody fusion at L4, 5 and S1.

On September 19, 2011 appellant filed a claim for a schedule award (Form CA-7) with respect to his accepted back condition.³ He submitted a September 8, 2011 impairment rating from his surgeon, Dr. Brian J. Battersby Jr.,⁴ who rated 33 percent whole person impairment (WPI) due to lumbar spondylolisthesis.⁵

In a September 27, 2011 report, Dr. H.P. Hogshead, a district medical adviser, stated that FECA did not permit awards for whole person spinal impairment. He noted, however, that a schedule award could be granted for extremity impairment resulting from spinal nerve root deficit. But in the absence of radiculopathy there was no extremity impairment. Dr. Hogshead rated zero (0) percent impairment of both lower extremities under the A.M.A., *Guides* (6th ed. 2008).

On October 4, 2011 OWCP requested additional medical evidence in support of his schedule award claim. On October 25, 2011 Dr. Battersby added an addendum to the report of Dr. Hogshead. He commented that the medical record clearly showed persistent radicular-type symptoms and that most back surgery patients had some type of symptoms, as an inherent risk of spinal surgery. Dr. Battersby noted generally that appellant's symptoms had improved, but he still had numbness in his foot and lower extremity pain in the affected nerve distributions. He noted that appellant could be sent for another rating.

By decision dated November 2, 2011, OWCP denied appellant's claim for a schedule award. It found that Dr. Battersby failed to provide clinical findings to support a firm diagnosis of radiculopathy or provide an impairment rating of the legs under the sixth edition of the A.M.A., *Guides*.

Appellant's counsel requested a hearing which was held on March 12, 2012. He submitted the results of a January 30, 2012 lower extremity electrodiagnostic study. At the March 12, 2012 hearing, counsel contended that the recent lower extremity electrodiagnostic study demonstrated the presence of radiculopathy.⁶ No additional impairment rating was provided.

³ OWCP previously granted a schedule award for seven percent impairment of the right upper extremity.

⁴ Dr. Battersby is a Board-certified orthopedic surgeon.

⁵ Dr. Battersby's 33 percent WPI rating was based on a class 4, E impairment under Table 17-4, Lumbar Spine Regional Grid: Spine Impairments, American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) 571 (6th ed. 2008).

⁶ At least one aspect to the study was stated to be "consistent with lumbar-sacral radiculopathic type changes."

In a May 30, 2012 decision, an OWCP hearing representative affirmed the November 2, 2011 decision. She noted receipt of the January 30, 2012 lower extremity electrodiagnostic study, but found that the additional evidence failed to provide any information regarding permanent impairment.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁷ FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁸ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).⁹

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or the implementing regulations.¹⁰ Neither, FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.¹¹ However, a schedule award is permissible where the employment-related back condition affects the upper and/or lower extremities.¹²

The sixth edition of the A.M.A., *Guides* (2008) provides a specific methodology for rating spinal nerve extremity impairment.¹³ It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine.¹⁴ The impairment is premised on evidence of radiculopathy affecting the upper and/or lower extremities.¹⁵

⁷ For a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

⁸ 20 C.F.R. § 10.404.

⁹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

¹⁰ *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

¹¹ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a); see *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *supra* note 9, Chapter 2.808.6a(3).

¹³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *supra* note 9, Chapter 3.700, Exhibit 4.

¹⁴ *Id.*

¹⁵ *Id.*

ANALYSIS

Appellant's surgeon, Dr. Battersby, submitted a September 8, 2011 impairment rating finding 33 percent whole person impairment of the spine due to lumbar spondylolisthesis.¹⁶ Dr. Hogshead correctly noted that FECA did not permit awards for whole person spinal impairment. He noted that a schedule award could be granted for lower extremity impairment resulting from spinal nerve root deficit, but in the absence of radiculopathy there was no extremity impairment. Dr. Hogshead found zero (0) percent impairment of both lower extremities under the A.M.A., *Guides* (6th ed. 2008).

On October 4, 2011 OWCP requested that appellant submit additional medical evidence from his physician in support of his schedule award claim. It provided instructions for his physician pertaining to the methodology for rating spinal nerve extremity impairment under the A.M.A., *Guides* (6th ed. 2008).

On October 25, 2011 Dr. Battersby stated generally that the medical record clearly showed persistent radicular-type symptoms. He did not refer to any specific physical findings or examination of appellant or provide an impairment rating of either lower extremity based on the accepted lumbar condition. Appellant's counsel submitted the results of a January 30, 2012 lower extremity electrodiagnostic study; but this evidence also failed to comply with OWCP's October 4, 2011 request for an impairment rating under the A.M.A., *Guides* (6th ed. 2008).

The Board finds that appellant failed to submit an impairment rating of his lower extremities based on the A.M.A., *Guides*. The Board finds that OWCP properly denied his claim for a schedule award.

CONCLUSION

Appellant failed to establish that he has a ratable impairment of the lower extremities due to his employment-related lumbar condition.¹⁷

¹⁶ Table 17-4, Lumbar Spine Regional Grid: Spine Impairments, A.M.A., *Guides* 571 (6th ed. 2008).

¹⁷ 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.

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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