

lumbar sprain and sciatica, right. It also authorized decompressive laminectomy L4-5 and L4-5 discectomy, which occurred on January 29, 2008. Appellant returned to limited duty on June 16, 2008.

On August 29, 2008 appellant requested a schedule award.

Appellant submitted a September 10, 2008 report from Dr. Randall L. Hendricks, a Board-certified orthopedic surgeon, who found that appellant had motor and sensory deficits due to his accepted injury. Pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Hendricks concluded that appellant had nine percent whole person impairment.

In a December 22, 2008 second opinion report, Dr. Sri K. Reddy, a Board-certified physiatrist, provided examination findings which revealed residual pain in both legs and sensory loss in the right L5 distribution. Referring to section 15.12 on page 423 of the fifth edition of the A.M.A., *Guides*, he concluded that appellant had a one percent sensory loss for the right lower extremity.

In a March 10, 2009 decision, OWCP granted appellant a schedule award for one percent impairment of his right lower extremity. The period of the award was from December 22, 2008 to January 11, 2009. OWCP determined that the date of maximum medical improvement was January 2, 2008.

On March 11, 2009 appellant requested reconsideration. By decision dated March 27, 2009, OWCP denied his request for merit review.

On April 10, 2009 appellant submitted a request for an additional schedule award. In support of his request, he submitted an April 6, 2009 report from Dr. Hendricks who opined that appellant had 7 percent permanent impairment of the right lower extremity as a result of numbness and 7 percent impairment from mild dorsiflexor weakness (L5 nerve root), for a combined right lower extremity impairment of 14 percent. Dr. Hendricks' report did not contain examination findings, an explanation of his opinions or references to the A.M.A., *Guides*.

In an October 28, 2009 second opinion report, Dr. Dennis E. Foster, a Board-certified orthopedic surgeon, provided examination findings which revealed restricted range of motion of the lumbosacral spine and "resultant weakness in the right lower extremity." He opined that appellant had 13 percent whole body impairment relative to his low back.

Pursuant to the district medical adviser's request, OWCP asked Dr. Foster to clarify his report in order to determine whether appellant had an abnormality due to the accepted injury that would result in permanent impairment to the lower extremity. On January 20, 2010 Dr. Foster indicated that his 13 percent rating took into consideration any residual effects of the right lower extremity as it related to the lower back condition. He stated that there was no reason to apportion an additional impairment for the right lower extremity.

OWCP forwarded Dr. Foster's reports to the district medical adviser for review. On March 1, 2010 the district medical adviser stated that Dr. Foster's reports were not adequate to

permit a proper impairment rating and recommended an evaluation by another second opinion physician.

OWCP referred appellant, together with the case record and a statement of accepted facts, to Dr. Christopher Jordan, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an April 14, 2010 report, Dr. Jordan reviewed appellant's history and described his findings on examination. Appellant demonstrated normal gait, no pain with palpation or flexion, and no spasm. Neurological examination was normal with intact motor and sensory function in both legs. Examination of the lower extremities revealed normal range of motion in all joints, no swelling or redness and no atrophy. Any radiculopathy had resolved. Pulses were 2+. He opined that pursuant to Tables 17-4, 17-6 and 17-7 of the sixth edition of the A.M.A., *Guides*, appellant had seven percent whole person impairment. He acknowledged, however, that OWCP does not accept whole person impairments as a basis for a schedule award. As appellant had "no extremity findings," he was unable to provide a rating for the lower extremities.

In a May 26, 2010 report, the district medical adviser stated that there was no basis for rating any impairment based on appellant's accepted conditions. He noted that Dr. Jordan had provided a rating for the spine or whole person, neither of which was permissible under the A.M.A., *Guides*. The medical adviser noted that Dr. Jordan's neurological examination was normal, with intact motor and sensory function in both legs. Accordingly, appellant had a zero percent permanent impairment of the lower extremities.

By decision dated June 25, 2010, OWCP denied appellant's request for an increased schedule award based upon the reports of Dr. Jordan and the district medical adviser.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁴ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.* For impairment ratings calculated on and after May 1, 2009, the Office should advise any physician evaluating permanent impairment to use the sixth edition of A.M.A., *Guides*. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

⁵ *See id.*; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.⁶ FECA and its implementing regulations do not provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole.⁷ The Board notes that section 8101(19) specifically excludes the back from the definition of organ.⁸ However, 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.⁹

ANALYSIS

Appellant's claim was accepted for lumbar sprain and sciatica, right. On March 10, 2009 OWCP granted a schedule award for a one percent impairment of his right lower extremity based on sensory loss. Appellant subsequently requested an additional schedule award. The medical evidence of record, however, does not establish that he has any permanent impairment to his lower extremities causally related to his accepted lumbar sprain and sciatica. As FECA does not provide for a schedule award based on impairment of the back or spine, the Board finds that appellant has no more than a one percent permanent impairment of his right lower extremity for schedule award purposes.

In his April 6, 2009 report, Dr. Hendricks opined that appellant had 7 percent permanent impairment of the right lower extremity as a result of numbness and 7 percent impairment from mild dorsiflexor weakness (L5 nerve root), for a combined right lower extremity impairment of 14 percent. His report did not contain examination findings, an explanation of his opinions or references to the A.M.A., *Guides*. It is therefore of limited probative value.

On October 28, 2009 Dr. Foster provided examination findings which revealed restricted range of motion of the lumbosacral spine and "resultant weakness in the right lower extremity." He opined that appellant had three percent whole body impairment relative to his low back. On January 20, 2010 Dr. Foster indicated that his 13 percent rating took into consideration any residual effects of the right lower extremity as it related to the lower back condition and stated that there was no reason to apportion an additional impairment for the right lower extremity. As Dr. Foster failed to explain how appellant's accepted conditions were causally related to a permanent impairment of a lower extremity, his report is of diminished probative value. Further, FECA and its implementing regulations do not provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole. Therefore, Dr. Foster's reports cannot form the basis of a schedule award.¹⁰

⁶ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

⁷ *See Jay K. Tomokiyo*, 51 ECAB 361 (2000).

⁸ 5 U.S.C. § 8101(19).

⁹ *Thomas J. Engelhart*, *supra* note 6.

¹⁰ *See supra* notes 7 and 8 and accompanying text.

Dr. Jordan's April 14, 2010 neurological examination was normal, with intact motor and sensory function in both legs. Examination of the lower extremities revealed normal range of motion in all joints, no swelling or redness and no atrophy. Any radiculopathy had resolved. Pulses were 2+. Dr. Jordan stated that as appellant had "no extremity findings," he was unable to provide a rating for the lower extremities.¹¹ The medical adviser reviewed Dr. Jordan's report, noting that appellant's neurological examination was normal, with intact motor and sensory function in both legs. Based upon Dr. Jordan's report, the district medical adviser concluded that appellant had a zero percent permanent impairment of the lower extremities. He noted that Dr. Jordan had provided a rating for the spine or whole person, neither of which was permissible under the A.M.A., *Guides*.

The Board finds that Dr. Jordan's report was well rationalized and provided a sufficient basis for a schedule award determination. The Board further finds that Dr. Jordan and the district medical adviser properly considered the medical evidence under the standards of the A.M.A., *Guides* and properly concluded that appellant had no permanent impairment of the lower extremities as of March 3, 2010. Therefore, OWCP properly denied appellant's request for an additional schedule award.

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 to establish that he has more than a one percent impairment of his right lower extremity.

¹¹ The Board notes that Dr. Jordan concluded that appellant had a seven percent whole person impairment, based upon Table 17-4, Table 17-6 and Table 17-7 of the sixth edition of the A.M.A., *Guides*, which address impairment related to a cervical spine injury. As noted, FECA and its implementing regulations do not provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole. *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board