

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**R.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
St. Petersburg, FL, Employer**

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**Docket No. 10-2317  
Issued: July 8, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On September 15, 2010 appellant filed a timely appeal from the August 17, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied an increased schedule award. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether appellant is entitled to an increased schedule award for impairment of his lower extremities.

**FACTUAL HISTORY**

On September 8, 1994 appellant, then a 51-year-old lead automotive mechanic, sustained a back injury in the performance of duty when he slipped and twisted his back while removing

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

stuck oil filters. OWCP accepted his claim for lumbar strain and aggravation of lumbar degenerative disc disease.

Appellant received schedule awards for a 27 percent impairment of each lower extremity. OWCP based his impairment rating on the December 27, 2007 evaluation performed by Dr. Ricky P. Lockett, the attending osteopath.

Appellant filed another schedule award claim and submitted a July 1, 2010 evaluation from Dr. Lockett, which was identical to his earlier evaluation. OWCP medical adviser noted this fact and found insufficient evidence to support any increased impairment.

In a decision dated August 17, 2010, OWCP denied appellant's claim for an increased schedule award.

On appeal, appellant argues that his back and pain have grown worse over the last four to five years, such that he is unable to do things he used to do.

### **LEGAL PRECEDENT**

Section 8107 of FECA<sup>2</sup> authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>3</sup>

A claimant seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.<sup>4</sup>

### **ANALYSIS**

After receiving schedule awards for a 27 percent impairment of each lower extremity, appellant filed another schedule award claim. He therefore has the burden of proof to establish that he currently has an increased impairment.

To support his claim, appellant submitted the July 1, 2010 evaluation performed by his osteopath, Dr. Lockett, who did not report any increased impairment. The impairment evaluation in 2010 was identical to his impairment evaluation in 2007. Dr. Lockett used the

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition of the A.M.A., *Guides*. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

<sup>4</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein; *Russell E. Grove*, 14 ECAB 288 (1963) (the claimant has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that his employment injuries resulted in a permanent impairment of the legs).

same pages and tables from the A.M.A. *Guides*. He identified the same nerves and offered the same grades of pain and strength. Dr. Lockett's 2010 evaluation differed in no single detail.

On its face, then, the medical evidence appellant submitted to support his most recent schedule award claim did not support an increased impairment. For this reason, the Board finds that he did not meet his burden of proof to establish that he has more than a 27 percent impairment of his right or left lower extremity. The Board will affirm OWCP's August 17, 2010 decision.<sup>5</sup>

Appellant argues that his back pain has grown worse in recent years, and that may be so, but no one is entitled to a schedule award for the back. The schedule award provisions of FECA and the implementing federal regulations<sup>6</sup> provide for payment of compensation for the permanent loss or loss of use of specified members, functions and organs of the body. No schedule award is payable for a member, function or organ of the body not specified in the Act or in the regulations.<sup>7</sup> Neither the Act nor the implement regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine,<sup>8</sup> no claimant is entitled to such an award.<sup>9</sup>

Appellant has the burden of proof to submit a physician's impairment evaluation conducted under the sixth edition of the A.M.A., *Guides* (2009) that establishes he has more than a 27 percent impairment of his right or left lower extremity.

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 is not entitled to an increased schedule award.

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<sup>5</sup> If a claimant who has received a schedule award calculated under a previous edition of the A.M.A. *Guides* is entitled to additional benefits, the increased award will be calculated according to the sixth edition. However, awards made prior to May 1, 2009, the effective date for use of the sixth edition of the A.M.A. *Guides*, should not be reconsidered merely on the basis that the A.M.A., *Guides* has changed. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.0808.7.b(4) (January 2010).

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> *William Edwin Muir*, 27 ECAB 579 (1976).

<sup>8</sup> The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

<sup>9</sup> *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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