

FACTUAL HISTORY

On October 1, 2009 appellant, then a 41-year-old health technician, filed a claim for traumatic injury, alleging that she sustained injury due to her work duties on September 18, 2009. She explained that she injured her back when she bent over to pick up a fallen object.

By report dated October 28, 2009, Dr. Robert Fink, a Board-certified orthopedic surgeon, diagnosed herniated lumbar disc at L5-S1 and disc bulge at L3-4. He stated that appellant's diagnoses were causally related to the alleged work incident.

On November 12, 2009 OWCP accepted appellant's claim for displacement of lumbar intervertebral disc without myelopathy.

Appellant underwent a series of epidural steroid injections as of January 15, 2010, performed by Dr. Adeel Ahmad, a Board-certified physician in physical medicine and rehabilitation. She underwent authorized lumbar laminectomy, microdiscectomy L4-5 on June 15, 2010, performed by Dr. Geoffrey Dixon, a Board-certified neurosurgeon.

On January 21, 2011 Dr. Ahmed reported that appellant continued to have low back pain with right lower limb pain and occasional parasthesias into the right foot. OWCP again authorized a series of epidural injections.

Appellant filed a claim for schedule award on August 9, 2011.

On August 24, 2011 OWCP requested that appellant's treating physician, Dr. Ahmad evaluate appellant's impairment according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* the sixth edition of the A.M.A., *Guides*. Dr. Ahmad submitted a medical report dated September 22, 2011 to OWCP. He listed the diagnoses of thoracic or lumbosacral neuritis or radiculitis, degeneration of lumbar or lumbosacral intervertebral disc, paresthesias and S/P lumbar spine operation. Dr. Ahmad recommended that appellant return to sedentary work for four hours a day.

Appellant also submitted an attending physician's report dated September 22, 2011, signed by Dr. Ahmad, which diagnosed lumbosacral neuritis. The report indicated that her period of partial disability was still to be determined.

By decision dated September 28, 2011, OWCP denied appellant's claim for schedule award.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing federal regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

Not all medical conditions accepted by OWCP result in permanent impairment to a scheduled member.⁷ It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.⁸

No schedule award is payable for a member, function or organ of the body not specified in FECA or in the regulations.⁹ Neither FECA nor the implementing regulations authorize the payment of a schedule award for the permanent loss of use of the back or spine.¹⁰ 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.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 her accepted employment injury of lumbar disc displacement. The Board finds that she has not submitted sufficient medical evidence to establish that she sustained permanent impairment to a scheduled

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁷ *H.P.*, Docket No. 11-894 (issued November 9, 2011); *Thomas P. Lavin*, 57 ECAB 353 (2006).

⁸ *H.P.*, *supra* note 7; *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁹ *C.E.*, Docket No. 11-637 (issued October 14, 2011); *William Edwin Muir*, 27 ECAB 579 (1976).

¹⁰ FECA specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

¹¹ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

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

member of the body resulting from the accepted employment injury. Nor does the medical evidence of record establish that she is at maximum medical improvement.

As noted, FECA does not allow 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. In support of her claim for schedule award, appellant submitted reports from Dr. Ahmad. Although OWCP properly advised him to do so, Dr. Ahmad did not provide any evaluation of lower extremity impairment pursuant to the A.M.A., *Guides*.

Before a schedule award can be granted pursuant to the A.M.A., *Guides*, a description of appellant's impairment must be obtained from her 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. Ahmad provided a diagnosis of appellant's condition as well as his opinion regarding of the cause of the condition, but he did not provide an impairment rating as requested.

The Board further notes that on September 22, 2011 Dr. Ahmad notes that appellant's period of partial disability was still to be determined. This statement suggests that appellant has not yet reached maximum medical improvement. As noted, permanent impairment should only be evaluated after she has reached maximum medical improvement. It is appellant's burden to establish entitlement to a schedule award, and she did not meet her burden in this case.

Appellant may request a schedule award in the future based on medical evidence showing that she has reached maximum medical improvement and has a permanent impairment to a scheduled member or function of the body.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award under 5 U.S.C. § 8107 as the medical evidence does not establish an employment-related permanent impairment to a scheduled member or function of the body.

¹³ See *D.N.*, 59 ECAB 576 (2008).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 28, 2011 is affirmed.

Issued: April 11, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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