

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

and then returned to regular work in late May 2009. Appellant later began working on a part-time basis.

On April 6, 2010 appellant submitted a claim for a schedule award due to his accepted injury. In support of his claim, he submitted a June 22, 2010 report in which Dr. Ernest T. Roman, an attending Board-certified internist, reported findings on examination and diagnosed lumbar intervertebral disc syndrome and lumbar radiculopathy (left L5). Dr. Roman indicated that appellant reached maximum medical improvement on June 9, 2010 and concluded that he had an eight percent permanent impairment of his whole person. He stated that, under Table 17-4 (Lumbar Spine Regional Grid) of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6<sup>th</sup> ed. 2009), appellant's intervertebral disc herniation equaled a default value of seven percent impairment under class 1. Dr. Roman stated that appellant had a physical examination score of +1 which raised his total whole person impairment to eight percent.

On December 16, 2010 OWCP referred appellant's case to Dr. Ronald Blum, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, for additional evaluation of the extent of his claimed impairment. On December 28, 2010 Dr. Blum reviewed Dr. Roman's June 22, 2010 report and recommended that Dr. Roman be asked to provide an impairment evaluation based on abnormalities found in appellant's lower extremities resulting from the accepted condition in the lumbar spine that would support the presence of impairment in the lower extremities. Dr. Blum indicated that, if Dr. Roman was unable to provide such clarification, appellant should be sent for a second opinion evaluation. In a December 29, 2010 letter, OWCP asked Dr. Roman to provide a clarifying opinion on impairment but he did not respond to this request.

In June 2011, OWCP referred appellant to Dr. Ahmed A. Khalifa, a Board-certified physical medicine and rehabilitation physician, for an examination and opinion on his permanent impairment under the standards of the sixth edition of the A.M.A., *Guides*.

In a June 30, 2011 report, Dr. Khalifa described appellant's medical history, detailed his findings on physical examination and diagnosed sacroiliac/lumbosacral sprain and degenerative disc and facet disease. He indicated that appellant had reached maximum medical improvement as his condition had not changed over the past several months and there was no indication that surgery or any other active treatment would make a difference in this condition. Dr. Khalifa stated that, under Table 17-4 (Lumbar Spine Regional Grid) on page 570 of the sixth edition of the A.M.A., *Guides*, appellant fell under the default value for class 1 due to chronic recurrent lower back pain and symptomatic degenerative disc disease. Under Table 17-6 on page 575, appellant fell under grade modifier 2 for function history because he had symptoms with normal activity and, under Table 17-7, he fell under grade modifier 0 because there was no specific motor or sensory deficit found on examination. Dr. Khalifa stated that, because there was no segmental instability or surgical intervention with hardware, appellant fell under grade modifier 0 for clinical studies when applying Table 17-9 on page 581. He then applied the Net Adjustment Formula to these values to arrive at a net adjustment value of 1 and stated, "Results class 1 with an adjustment of 1. From Table 17-10 on page 582, impairment class 1, Grade D = 6 [percent] [whole person] = 15 [percent] [lower extremity]." Dr. Khalifa concluded that appellant had 15 percent permanent impairment "of lower extremity."

On January 9, 2012 Dr. Blum indicated that he had reviewed the June 30, 2011 report of Dr. Khalifa. He noted that Dr. Khalifa utilized Table 17-10 on page 582 to find that appellant had a class 1 impairment of six percent of the whole person, but indicated that his application of Table 17-10 was improper as the table was to be used only as an example as to how to calculate grade modifiers and did not present values for lumbar spine disease.<sup>2</sup> Dr. Blum stated that Dr. Khalifa provided an evaluation of the lumbar spine to derive at a whole person impairment, which he then converted to a lower extremity impairment. He noted that the spine and whole person are not scheduled members under FECA and therefore he was unable to recommend impairment for appellant based on impairment of the spine or whole person. Prior to concluding that appellant had a zero percent permanent impairment of his right leg and a zero percent permanent impairment of his left leg, Dr. Blum stated:

“Under the provisions of [FECA], awards for permanent impairment may not be paid for the spine. However, such awards can be paid for impairment of the upper or lower extremities caused by injury to a spinal nerve. Dr. Khalifa recommended whole person impairment and converted this value to lower extremity. He also stated the motor and sensory function to the lower extremities is intact. This means to me that [Dr. Khalifa] does not identify any impairment in the lower extremities resulting from the accepted conditions in the lumbar spine. It is for this reason that it is my opinion the claimant does not have objective evidence for impairment in the lower extremities resulting from the accepted work[-]related condition in the lumbar spine.”

In a May 10, 2012 decision, OWCP determined that appellant did not have permanent impairment of his legs entitling him to schedule award compensation. It based this determination on the January 9, 2012 report of Dr. Blum.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>3</sup> and its implementing regulations<sup>4</sup> 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 regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.<sup>6</sup>

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<sup>2</sup> Dr. Blum also indicated that the grade modifier calculations that Dr. Khalifa provided were incorrect.

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.*

<sup>6</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

A schedule award is not payable for the loss, or loss of use, of a part of the body that is not specifically enumerated under FECA. Neither, FECA nor its implementing regulations provide for a schedule award for impairment to the back, spine or to the body as a whole. Furthermore, the back is specifically excluded from the definition of organ under FECA.<sup>7</sup>

### ANALYSIS

OWCP accepted that appellant sustained a lumbar sprain while loading a postal vehicle. In a May 10, 2012 decision, it determined that appellant did not have permanent impairment of his legs entitling him to schedule award compensation. OWCP based this determination on the January 9, 2012 report of Dr. Blum, a Board-certified orthopedic surgeon who served as an OWCP medical adviser. Dr. Blum had evaluated a June 30, 2011 report of Dr. Khalifa, a Board-certified physical medicine and rehabilitation physician who served as an OWCP referral physician.

The Board finds that OWCP properly relied on the January 9, 2012 report of Dr. Blum to determine that appellant did not have permanent impairment entitling him to schedule award compensation.

In his report, Dr. Blum explained that Dr. Khalifa inappropriately derived an impairment rating for appellant's back/spine (under Table 17-4 on page 570 of the sixth edition of the A.M.A., *Guides*) because neither FECA nor its implementing regulations provide for a schedule award for impairment to the back or spine.<sup>8</sup> He also noted that Dr. Khalifa improperly utilized Table 17-10 on page 582 to find that appellant had a class 1 impairment of six percent of the whole person, because this table was to be used only as an example as to how to calculate grade modifiers and did not present values for lumbar spine disease.<sup>9</sup> Dr. Blum stated that a schedule award could be granted for the legs if it was shown that a permanent impairment extended into the legs from a work-related back condition. However, he explained that the findings of record did not show any impairment of appellant's legs which stemmed from the accepted condition of lumbar sprain. Dr. Blum noted that Dr. Khalifa acknowledged this fact when he stated that no specific motor or sensory deficit of appellant's legs was found on examination. In this regard, he stated, "This means to me that [Dr. Khalifa] does not identify any impairment in the lower extremities resulting from the accepted conditions in the lumbar spine. It is for this reason that it is my opinion the claimant does not have objective evidence for impairment in the lower extremities resulting from the accepted work[-]related condition in the lumbar spine."<sup>10</sup>

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<sup>7</sup> *James E. Mills*, 43 ECAB 215, 219 (1991); *James E. Jenkins*, 39 ECAB 860, 866 (1990).

<sup>8</sup> *Id.*

<sup>9</sup> Dr. Blum also pointed out that impairment ratings for the whole person were not allowed under FECA. See *supra* note 7.

<sup>10</sup> The Board notes that Dr. Blum also properly determined that a June 22, 2010 whole person impairment rating of Dr. Roman, an attending Board-certified internist, was not properly calculated in accordance with the relevant standards of the A.M.A., *Guides*. After Dr. Roman did not respond to an OWCP request for clarification, appellant was appropriately referred to Dr. Khalifa for further evaluation.

Appellant did not submit any medical evidence showing that he is entitled to schedule award compensation and OWCP properly denied his claim. He 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 OWCP properly determined that appellant did not have permanent impairment entitling him to schedule award compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 10, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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