

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In a December 14, 2011 decision, the Board found that the opinion of Dr. Gordon P. Nutik, the referee physician and a Board-certified orthopedic surgeon, did not properly resolve a conflict in medical opinion evidence regarding the extent of appellant's lower extremity impairment caused by the accepted July 20, 2004 employment injury. The Board remanded the case for further development.²

On July 20, 2004 appellant, a 49-year-old painter, injured his lower back while in the performance of duty. He stopped work and did not return. OWCP accepted appellant's traumatic injury claim for lumbar sprain, lumbar disc displacement and aggravation of lumbar spinal stenosis. It granted schedule awards for 11 percent permanent impairment of the left lower extremity and 10 percent permanent impairment of the right lower extremity for the period August 7, 2008 to October 4, 2009. Appellant disagreed with the schedule award decisions.

Following the Board's December 14, 2011 decision, appellant was referred to Dr. Lida Dahm, a Board-certified anesthesiologist, for a referee examination. In a January 11, 2012 report, Dr. Dahm evaluated the medical records and conducted a physical examination. She observed limited lumbosacral range of motion (ROM), L5 tenderness, lordotic straightening, slight scoliosis and minimal bilateral lateral thigh numbness to light touch. Dr. Dahm also elicited bilateral hip and right lower extremity pain during external rotation and passive dorsiflexion maneuvers. Straight leg raise test results were positive at 55 degrees for the right leg and 70 degrees for the left leg. Dr. Dahm pointed out that the objective findings did not indicate atrophy, loss of strength, or sensory or motor deficits in the distribution of a specific spinal nerve root. Based on Proposed Table 2 (Spinal Nerve Impairment: Lower Extremity Impairments) of "Rating Spinal Nerve Extremity Impairment Using the Sixth Edition"³ (hereinafter American Medical Association (A.M.A.), *Guides Newsletter*), she concluded that appellant did not sustain any additional impairment of the lower extremities.⁴ On February 7, 2012 an OWCP medical adviser reviewed the record and agreed with Dr. Dahm's report.

By decision dated February 10, 2012, OWCP determined that appellant was not entitled to an additional schedule award. It found that the medical evidence did not establish more than 11 percent permanent impairment of the left leg or 10 percent permanent impairment of the right leg.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

² Docket No. 11-421 (issued December 14, 2011). Facts and findings contained in the Board's prior decision are set forth as appropriate or otherwise incorporated by reference.

³ Christopher R. Brigham, M.D., "Rating Spinal Nerve Extremity Impairment Using the Sixth Edition," *The Guides Newsletter* (July-August 2009).

⁴ Dr. Dahm correctly noted that FECA does not recognize whole-person ratings for spinal impairments. See *Tommy R. Martin*, 56 ECAB 273 (2005); see also *J.B.*, Docket No. 12-1626 (issued March 13, 2013).

loss of or loss of use of scheduled members or functions of the body.⁵ 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.⁶

Although the A.M.A., *Guides* presents methods for estimating impairment to the spine and to the whole person,⁷ FECA does not authorize schedule awards for loss of use of the spine or the body as a whole.⁸ Amendments to FECA, however, modified the schedule award provision to allow 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. As the schedule award provisions of FECA include the extremities, a claimant may be entitled to a schedule award for permanent impairment to a limb even though the cause of the impairment originated in the spine.⁹

The A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, the A.M.A., *Guides Newsletter* offers an approach to rating spinal nerve impairments.¹⁰ OWCP has adopted this approach for rating impairment to the upper or lower extremities caused by a spinal injury.¹¹

ANALYSIS

OWCP accepted appellant's traumatic injury claim for lumbar sprain, lumbar disc displacement and aggravation of lumbar spinal stenosis. It subsequently granted a schedule award for 11 percent permanent impairment of the left lower extremity and 10 percent permanent impairment of the right lower extremity. Following appellant's appeal of the schedule award determination, by decision dated December 14, 2011, the Board remanded the case on the grounds that the conflict in medical opinion evidence regarding the extent of his lower extremity impairment remained unresolved. Thereafter, Dr. Dahm was chosen as the new referee examiner.

⁵ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

⁶ *K.H.*, Docket No. 09-341 (issued December 30, 2011).

⁷ See *B.M.*, Docket No. 09-2231 (issued May 14, 2010); *Janae J. Triplette*, 54 ECAB 792 (2003).

⁸ *D.A.*, Docket No. 10-2172 (issued August 3, 2011); *J.Q.*, 59 ECAB 366 (2008). FECA expressly defines "organ" as "a part of the body that performs a special function, and for purposes of this subchapter excludes the brain, heart and back." 5 U.S.C. § 8101(19). No schedule award is payable for a member, function or organ of the body not specified under FECA or the implementing regulations. *J.Q.*, *id.*

⁹ *W.D.*, Docket No. 10-274 (issued September 3, 2010); *Rozella L. Skinner*, 37 ECAB 398 (1986).

¹⁰ *L.J.*, Docket No. 10-1263 (issued March 3, 2011).

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

When an impartial medical specialist is asked to resolve a conflict in medical evidence, his or her opinion, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹² In this case, the Board finds that Dr. Dahm's January 11, 2012 report is entitled to special weight. Following a review of the medical file and a comprehensive physical examination, Dr. Dahm pointed out that the objective findings did not include sensory or motor deficits in the distribution of a specific spinal nerve root. In the absence of such findings, she concluded that appellant did not sustain any additional impairment of the lower extremities under Proposed Table 2 of the A.M.A., *Guides Newsletter*. In view of Dr. Dahm's report, the Board finds that appellant did not sustain more than 11 percent permanent impairment of the left lower extremity and 10 percent permanent impairment of the right lower extremity.

Appellant contends on appeal that he should be reinstated to his position and receive back pay. The Board has jurisdiction to consider and decide appeals from final decisions of OWCP in any case arising under FECA.¹³ The Board does not have jurisdiction to consider ancillary matters such as reinstatement to a federal position and back pay.¹⁴

Appellant may request an increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in increased permanent impairment.

CONCLUSION

The Board finds that appellant did not sustain more than 11 percent permanent impairment of the left lower extremity and 10 percent permanent impairment of the right lower extremity.

¹² *L.W.*, 59 ECAB 471 (2007). *See also Thomas J. Fragale*, 55 ECAB 619, 622 (2004) ("the resolution of the conflict is the responsibility of the impartial medical specialist").

¹³ 20 C.F.R. § 501.2(c).

¹⁴ *See, e.g., Laura Brazinski*, 34 ECAB 1186 (1983).

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2012 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 2, 2013
Washington, DC

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

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

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