

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

V.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Washington, DC, Employer**

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**Docket No. 16-0702
Issued: July 15, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 26, 2016 appellant filed a timely appeal from a January 28, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish permanent impairment causally related to the December 8, 1987 employment injury.

FACTUAL HISTORY

On December 14, 1987 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 8, 1987 he experienced severe back pain when he lifted heavy bags and bundles of mail, and placed mail in mailboxes. He began to work full-time

¹ 5 U.S.C. § 8101 *et seq.*

light duty. OWCP accepted appellant's claim for degeneration of lumbar or lumbosacral intervertebral disc and lumbosacral sprain. It paid leave buyback compensation. Appellant continued to receive medical treatment. The record does not contain evidence of medical treatment from January 3, 2011 to December 30, 2014.

On January 9, 2015 appellant filed a claim for a schedule award (Form CA-7). He submitted a December 30, 2014 narrative report from Dr. Frank Seinsheimer, III, a Board-certified orthopedic surgeon specializing in hand surgery, who related that appellant continued to have constant low back pain since a 1987 work-related injury. Upon examination, Dr. Seinsheimer observed that appellant's thoracic spine, lumbar spine, costovertebral angles, posterior superior iliac spines, and sciatic notches were nontender. He reported that appellant's hips had full, painless range of motion. Straight leg raise testing was negative at 60 degrees bilaterally and muscle strength was normal. Trendelenburg's test was negative. Dr. Seinsheimer reported that new x-rays of the lumbar spine showed slight decreased height at L3-4 with grade 1 retrolisthesis at L3-4. He also noted some calcification just posterior to his intervertebral space. Dr. Seinsheimer diagnosed chronic lumbar pain.

In a letter dated March 16, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish his schedule award claim. It requested that he provide a medical report from his treating physician addressing whether he reached maximum medical improvement and whether his accepted conditions caused permanent impairment pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Appellant was afforded 30 days to submit this evidence.

On June 22, 2015 appellant returned the development letter with handwritten notations. He indicated that his diagnosis was degenerative disease, lumbar sprain, and chronic lumbar pain. Appellant also noted an impairment rating of five percent of the whole body.

In a decision dated August 27, 2015, OWCP denied appellant's claim for a schedule award. It found that the medical evidence of record failed to establish that he sustained permanent impairment under the sixth edition of the A.M.A., *Guides* causally related to the December 8, 1987 employment injury.

On November 10, 2015 OWCP received appellant's request for reconsideration. Appellant noted that he was enclosing a September 17, 2015 medical report by Dr. Seinsheimer that contained the information OWCP requested and constituted competent medical evidence.

Appellant submitted a September 17, 2015 medical report from Dr. Seinsheimer who related that appellant had received medical treatment since 1987 for degenerative disc disease and chronic lumbar strain. Dr. Seinsheimer explained that appellant's condition had reached maximum medical improvement many years ago. He opined that according to the sixth edition of the A.M.A., *Guides*, appellant had five percent whole body impairment for his chronic lumbar sprain. Dr. Seinsheimer indicated that appellant's permanent impairment was due to his persistent low back pain.

By decision dated January 28, 2016, OWCP denied modification of the August 27, 2015 decision. It determined that Dr. Seinsheimer's September 17, 2015 medical report failed to

establish that appellant sustained a compensable permanent impairment as a result of his December 8, 1987 employment injury.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations 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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP as the appropriate standards for evaluating schedule losses.³

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, under FECA a schedule award is not payable for injury to the spine.⁴ 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.⁵

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. The A.M.A., *Guides* for decades has offered an alternative approach to rating spinal nerve impairments.⁶ OWCP has adopted this approach for rating impairment of the upper or lower extremities caused by a spinal injury, as provided in section 3.700 of its procedures, which memorializes proposed tables as outlined in *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment (July/August 2009 edition) of the sixth edition.⁷

² *Id.*

³ 20 C.F.R. § 10.404 (1999); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁴ *W.D.*, Docket No. 10-274 (issued September 3, 2010); *Richard R. LeMay*, 56 ECAB 341 (2005); *Pamela J. Darling*, 49 ECAB 286 (1998).

⁵ *K.H.*, Docket No. 09-341 (issued December 30, 2009); *Thomas J. Engelhart*, 50 ECAB 319 (1999).

⁶ *Rozella L. Skinner*, 37 ECAB 398 (1986).

⁷ FECA Transmittal No. 10-04 (issued January 9, 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1, note 5 (January 2010); *The Guides Newsletter* is included as Exhibit 4.

ANALYSIS

OWCP accepted that appellant sustained degeneration of his lumbosacral intervertebral disc and a lumbosacral sprain as a result of a December 8, 1987 employment injury. Appellant worked full-time light duty. On January 9, 2015 appellant filed a claim for a schedule award.

In support of his claim, appellant submitted several reports from Dr. Seinsheimer. In December 30, 2014 and September 17, 2015 reports, Dr. Seinsheimer related that appellant continued to have constant low back pain since a 1987 work-related injury and received medical treatment for degenerative disc disease and chronic lumbar pain. Upon examination, he observed that appellant's thoracic spine, lumbar spine, costovertebral angles, posterior superior iliac spines, and sciatic notches were nontender. Straight leg raise testing was negative at 60 degrees bilaterally and Trendelenburg's test was negative. Dr. Seinsheimer reported that new x-rays of the lumbar spine showed slight decreased height at L3-4 with grade 1 retrolisthesis at L3-4. He also noted some calcification just posterior to his intervertebral space. Dr. Seinsheimer diagnosed chronic lumbar pain. He explained that appellant's condition had reached maximum medical improvement many years ago. Dr. Seinsheimer opined that according to the sixth edition of the A.M.A., *Guides*, appellant had five percent whole body impairment⁸ for his chronic lumbar sprain and persistent low back pain from which he suffered.

Under OWCP procedures, medical evidence to support a schedule award should include a report that shows that the claimant has reached a date of MMI, describe the impairment in sufficient detail for the claims examiner to visualize the character and degree of disability, and give a percentage of impairment under the A.M.A., *Guides*.⁹

Although Dr. Seinsheimer noted that appellant had reached maximum medical improvement and opined that he had five percent whole body impairment according to the sixth edition of the A.M.A., *Guides*, he did not reference the appropriate tables for rating impairment for a spinal injury. As noted above, the sixth edition of the A.M.A., *Guides* does not provide for a schedule award for injury to the spine.¹⁰ However, impairment of a scheduled member of the upper or lower extremities is payable under FECA, if it originates from the spine.¹¹ The approach of rating impairment of the upper or lower extremities caused by a spinal injury is provided in section 3.700 of OWCP procedures, which memorializes proposed tables as outlined in a July/August 2009, *The Guides Newsletter*.¹² The Board notes that Dr. Seinsheimer did not reference or provide an evaluation in accordance with the July/August 2009, *The Guides Newsletter*. He did not rate appellant's impairment pursuant to *The Guides Newsletter*, and his

⁸ The Board notes that there is no statutory basis for the payment of a schedule award for whole body impairment under FECA. See *S.R.*, Docket No. 14-1103 (issued September 4, 2014); *N.M.*, 58 ECAB 273 (2007).

⁹ See *J.M.*, Docket No. 16-0224 (issued May 20, 2016).

¹⁰ *Supra* note 4.

¹¹ *Supra* note 5.

¹² *Supra* note 7.

rating is therefore insufficient to establish that appellant is entitled to a schedule award due to his accepted lumbar injury.

Appellant bears the burden to prove permanent impairment for a schedule award based upon the proper rating practices.¹³ As he has not submitted probative medical opinion evidence from a physician addressing how his impairment correlated to the appropriate edition of the A.M.A., *Guides* nor did the evidence of record explain the causal relationship between these findings and his permanent impairment, the Board finds that appellant did not meet his burden of proof to establish his claim to a 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 established permanent impairment causally related to his December 8, 1987 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹³ *Veronica Williams*, 56 ECAB 357 (2005).