

(NCS) of the lower extremities and lumbar musculature were within normal limits. Appellant returned to limited duty for four hours daily on October 1, 2001 and to full eight-hour duty on December 7, 2001. She filed a recurrence claim on September 5, 2002. Appellant returned to a full-time modified clerical position on March 19, 2003. In decisions dated from April 17, 2003 to March 7, 2007, the Office denied appellant's recurrence claim.¹

On February 1, 2009 she submitted a schedule award claim and, by letter dated February 9, 2009, the Office informed her that she should provide a physician's assessment, based on loss of function of the lower extremities, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).² She was provided a form letter to give her physician for a lower extremity impairment evaluation and given 30 days to respond.

A January 21, 2007 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated mild encroachment on the neural foramina at L3-4, concentric bulging of the L4-5 disc with possible nerve root impingement and mild concentric bulging at L5-S1 with possible nerve root impingement, and a December 10, 2008 MRI scan report noted no interval change.³

By decision dated March 12, 2009, the Office denied appellant's claim for a schedule award, finding that she had not provided the requested medical evidence.

On March 18, 2009 appellant, through her attorney, requested a hearing and submitted a March 2, 2009 report from Dr. Robert P. Kropac, an attending orthopedic surgeon. He noted the history of injury and medical treatment and listed her complaints of low back pain. Physical examination demonstrated tenderness from L2 to S1 with limited range of motion of the lumbosacral spine and decreased sensation to light touch over the entire lateral aspect of the left lower extremity from the trochanteric eminence to the lateral aspect of the left foot, not in a dermatomal pattern, normal strength and no atrophy. Range of motion of all joints of the lower extremities was full. Dr. Kropac diagnosed chronic lumbosacral musculoligamentous strain secondary to the May 15, 2001 injury with subjective complaints, clinical findings and MRI scan findings consistent with the diagnosis. He advised that appellant had reached maximum medical improvement and had residuals of the employment injury. Dr. Kropac provided an impairment evaluation, using Chapter 17 (The Spine and Pelvis), of the sixth edition of the A.M.A., *Guides*, concluding that, based on Table 17-6, Table 17-7 and Table 17-9, appellant had a two percent whole person impairment.⁴

¹ In the most recent decision, dated March 7, 2007, the Office denied appellant's January 23, 2007 request for reconsideration of a January 25, 2005 decision on the grounds that she failed to establish clear evidence of error. Appellant did not file an appeal with the Board of the March 7, 2007 decision.

² A.M.A., *Guides* (6th ed. 2009).

³ Appellant also submitted MRI scan reports dated August 2, 2001 and February 20, 2003 and a November 19, 2001 lumbar myelogram and computerized tomography report that showed similar findings.

⁴ Dr. Kropac submitted reports dated from December 5, 2002 to December 1, 2008 describing appellant's complaints of back pain, provided physical examination findings, and diagnosed lumbosacral musculoligamentous strain.

At the June 24, 2009 hearing, counsel inquired as to what conditions had been accepted and requested that Dr. Kropac's impairment evaluation be forwarded to an Office medical adviser. Appellant testified that her medical condition had deteriorated. In a June 25, 2009 report, Dr. Kropac noted appellant's complaint of persistent back pain, radiating to both extremities with numbness and tingling. Physical examination findings included decreased sensation in the great toe to light touch and diminished lumbosacral spine range of motion.

By decision dated August 20, 2009, an Office hearing representative found the medical evidence insufficient to establish permanent impairment and affirmed the March 12, 2009 decision. She noted that strains were not typically considered permanent and that no impairment of a scheduled member was described.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,⁵ and its implementing federal regulations,⁶ 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, the Act 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, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ For decisions from February 1, 2001 through April 30, 2009, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.⁸ For decisions issued after May 1, 2009, the sixth edition will be used.⁹

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under the Act for injury to the spine.¹⁰ In 1960, amendments to the Act 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, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originates in the spine.¹¹ In determining the amount of the schedule award for a member of the body that sustained an employment-related impairment,

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁹ FECA Bulletin No. 09-03 (issued March 15, 2009); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

¹⁰ *Pamela J. Darling*, 49 ECAB 286 (1998).

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

preexisting impairments are to be included in the evaluation of permanent impairment.¹² The Act does not authorize schedule awards for permanent impairment of the whole person.¹³

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the Office medical adviser providing rationale for the percentage of impairment specified.¹⁴

ANALYSIS

The Board finds this case is not in posture for decision. Dr. Kropac's March 2, 2009 report included an impairment rating of appellant's lumbar spine, but as noted, a schedule award is not payable under the Act for injury to the spine.¹⁵ He rated a whole person impairment but the Act does not authorize schedule awards for permanent impairment of the whole person.¹⁶ Dr. Kropac provided physical examination findings including decreased sensation to light touch over the entire lateral aspect of the left lower extremity. In a June 25, 2009 report, he noted decreased sensation in the great toe. 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.¹⁷

In this case, the hearing representative made a medical determination as to the injury appellant sustained not causing or contributing to any permanent impairment without the benefit of medical advise or review by an Office medical adviser. Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of any impairment in accordance with the A.M.A., *Guides*.¹⁸ In this case, none of the medical evidence was forwarded to an Office medical adviser for review. For these reasons, the March 12 and August 20, 2009 decisions will be set aside and the case remanded to the Office for review of the medical record by an Office medical adviser. Following such development as the Office deems necessary, it shall issue an appropriate merit decision.

¹² *B.P.*, 60 ECAB ____ (Docket No. 08-1457, issued February 2, 2009).

¹³ *D.J.*, 59 ECAB ____ (Docket No. 08-725, issued July 9, 2008).

¹⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹⁵ *Pamela J. Darling*, *supra* note 10.

¹⁶ *D.J.*, *supra* note 13.

¹⁷ *Thomas J. Engelhart*, *supra* note 11.

¹⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the August 20 and March 12, 2009 decisions of the Office of Workers' Compensation Programs be set aside. The case is remanded to the Office for proceedings consistent with this decision of the Board.

Issued: May 14, 2010
Washington, DC

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

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

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