



On February 6, 2009 appellant filed a claim for compensation (Form CA-7) indicating he was claiming a schedule award. He submitted a February 3, 2009 report from Dr. Todd Hochman, an internist, who opined that appellant had a 10 percent permanent impairment to the left leg for sensory and motor deficit under the 5<sup>th</sup> edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

The Office referred appellant for a second opinion examination by Dr. Robert Draper, an orthopedic surgeon, who was advised by the Office to use the 6<sup>th</sup> edition of the A.M.A., *Guides* and provide an opinion as to the degree of employment-related permanent impairment to the legs. In a report dated February 23, 2009, Dr. Draper provided a history and results on examination. He stated that he would not use the 6<sup>th</sup> edition because it did not appear that under the 6<sup>th</sup> edition a rating for radiculopathy to the legs could be established. Dr. Draper found that under the 5<sup>th</sup> edition of the A.M.A., *Guides* appellant had a one percent permanent impairment to the left leg for sensory deficit or pain.

On May 27, 2009 the Office referred appellant for a second opinion examination by Dr. Peter Feinstein, an orthopedic surgeon. In a report dated June 10, 2009, Dr. Feinstein provided a history, reviewed medical records and provided results on examination. He reported left paravertebral and muscular discomfort on direct palpation and subjective sensory changes on both feet. Dr. Feinstein indicated there were no objective findings of atrophy or decreased strength. With respect to a permanent impairment causally related to the employment injuries under the 6<sup>th</sup> edition, he indicated that the only applicable table was 17-4, Class 0 for complaints of back pain with no objective findings on examination. Dr. Feinstein stated that therefore appellant did not have a ratable impairment.

In a report dated June 12, 2009, an Office medical adviser opined that the weight of the evidence indicated a zero percent permanent impairment to the legs. He noted the findings by Dr. Feinstein under Table 17-4.

By decision dated June 24, 2009, the Office determined that appellant was not entitled to a schedule award. Appellant requested a telephonic hearing, which was held on September 29, 2009. In a decision dated December 1, 2009, the hearing representative affirmed the June 24, 2009 Office decision.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>1</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal

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<sup>1</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>2</sup>

### ANALYSIS

In this case, the Office undertook additional development of the medical evidence with respect to the schedule award issue. As of May 1, 2009, any decision regarding a schedule award must be based on the 6<sup>th</sup> edition.<sup>3</sup> The Office referred appellant to Dr. Feinstein for a second opinion examination. Dr. Feinstein identified Table 17-4, and found appellant had a Class 0 impairment rating. The Office medical adviser concurred in this finding, but Table 17-4 is the lumbar spine regional grid for impairments to the lumbar spine.<sup>4</sup> It is well established that neither the Act nor its regulations provide for a schedule award for impairment to the back or to the whole body. Furthermore, the back is specifically excluded from the definition of “organ” under the Act.<sup>5</sup> The Board has held that Table 17-4 is not an appropriate basis for an impairment rating under the Act.<sup>6</sup>

The Board accordingly finds that the medical evidence does not contain a sufficiently reasoned medical opinion as to the degree of permanent impairment to a scheduled member or function of the body under the 6<sup>th</sup> edition of the A.M.A., *Guides*. When the Office refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, the Office should secure an appropriate report on the relevant issues.<sup>7</sup>

The case will be remanded to the Office for further development of the medical evidence on the schedule award issue presented. After such further development as the Office deems necessary, it should issue an appropriate decision.

### CONCLUSION

The Board finds that the case is not in posture for decision with respect to entitlement to a schedule award, and the case is remanded for further development of the medical evidence.

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<sup>2</sup> *A. George Lampo*, 45 ECAB 441 (1994).

<sup>3</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>4</sup> A.M.A., *Guides* 570, Table 17-4.

<sup>5</sup> *See James E. Jenkins*, 39 ECAB 860 (1988); 5 U.S.C. § 8101(20).

<sup>6</sup> *See H.J.*, Docket No. 09-2366 (issued June 23, 2010).

<sup>7</sup> *See Robert Kirby*, 51 ECAB 474, 476 (2000); *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 1 and June 24, 2009 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 26, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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