

In an October 20, 2000 decision, the Board affirmed the termination of appellant's compensation benefits effective September 15, 1997.² The Board found the medical evidence of record established that appellant had no continuing disability or medical condition causally related to his December 12, 1995 employment injury accepted for a lumbar strain. The Board, in a June 6, 2006 decision, affirmed the Office's decisions dated June 8 and December 10, 2004 and February 1, 2005 denying his claim for wage-loss compensation on and after September 15, 2007 as causally related to either his May 20, 1994 or December 12, 1995 employment injuries.³ In a May 12, 2010 order, the Board set aside a February 5, 2009 OWCP decision denying modification of a November 6, 2007 schedule award for 40 percent left lower extremity impairment directing OWCP to review all the evidence of record submitted prior to the issuance of its February 5, 2009 decision.⁴ The November 6, 2007 schedule award was based on a September 6, 2007 report of OWCP's medical adviser who noted 41 percent left lower extremity impairment.⁵ The award ran for 115.2 weeks for the period June 28, 2006 to September 11, 2008. The facts and the circumstances surrounding the prior appeal are hereby incorporated by reference.

The medical evidence received prior to the February 5, 2009 OWCP decision includes reports for the period November 9, 2007 through February 8, 2008 from Dr. Huntley G. Chapman, a treating Board-certified orthopedic surgeon, and reports from Dr. Philip M. Brown, an examining physician specializing in pain management. Dr. Chapman noted appellant's complaints of back pain and left leg sciatica and provided findings on physical examination. Appellant was treated by Dr. Brown for his low back pain from October 21, 2008 through March 2, 2010.

² Docket No. 99-180 (issued October 20, 2000). On May 23, 1994 appellant filed a traumatic injury claim alleging that on May 20, 1994 he injured his left hip and lower left back while unloading a mail truck. OWCP accepted the claim for left hip and lower back strain and assigned it claim number xxxxxx656. On June 21, 1995 it issued a loss of wage-earning capacity decision which found that appellant's actual earnings as a material handler fairly and reasonably represented his wage-earning capacity and that he had no lost wages. On December 19, 1995 appellant, then a 46-year-old material handler, filed a claim alleging that on December 12, 1995 he sustained a lumbar strain while climbing a pole. OWCP accepted the claim for a lumbar strain and assigned it claim number xxxxxx828. Appellant was placed on the periodic rolls for temporary total disability effective May 11, 1996. OWCP combined claim numbers xxxxxx656 and xxxxxx828 on January 11, 2001 with claim number xxxxxx656 as the master file number. It also noted that claim number xxxxxx828 was closed.

³ Docket No. 05-1181 (issued June 6, 2006).

⁴ Docket No. 09-1771 (issued May 12, 2010).

⁵ Based on Table 17-8, page 532 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), OWCP's medical adviser assigned 5 percent impairment for hip flexion, 17 percent impairment for hip extension and 25 percent impairment for hip abduction all based on a Grade 4 weakness.

By decision dated June 4, 2010, OWCP denied appellant's request for an additional schedule award.⁶ It found that the medical evidence did not establish a greater impairment rating.

LEGAL PRECEDENT

The schedule award provision of FECA⁷ and its implementing regulations⁸ 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.⁹ Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.¹⁰

ANALYSIS

OWCP accepted that appellant sustained left hip and lower back strain as a result of his May 20, 1994 employment injury and a lumbar strain as a result of a December 2, 1995 employment injury. By decision dated November 6, 2007, OWCP granted appellant a scheduled award for 40 percent left lower extremity impairment. On October 24, 2008 appellant requested reconsideration of this decision. OWCP denied his request for an increased schedule award on June 4, 2010.

In support of his claim for an increased schedule award appellant submitted reports from Drs. Brown and Chapman. The medical reports from the physicians do not establish any increased impairment to his left lower extremity as a result of the accepted employment injuries. It is appellant's burden of proof to establish entitlement to a schedule award.¹¹ OWCP procedures provide that to support a schedule award, the record must contain probative medical evidence that establishes permanent impairment in detail, provides a percentage of impairment

⁶ The Board notes that, following the June 4, 2010 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. § 501.2(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003); *M.B.*, Docket No. 09-176 (issued September 23, 2009).

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ *Id.* See *C.M.*, Docket No. 09-1268 (issued January 22, 2010); *Billy B. Scoles*, 57 ECAB 258 (2005).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹¹ *Tammy L. Meehan*, 53 ECAB 220 (2001).

and an opinion that the impairment is permanent and stable.¹² The Board finds that neither Dr. Brown nor Dr. Chapman provided an explanation establishing any increased impairment to appellant's left lower extremity. Dr. Brown's reports concerned treatment for appellant's low back pain while Dr. Chapman's reports concerned treatment for low back pain and left sciatica. These reports fail to establish an increased permanent impairment due to the accepted employment injuries.

Appellant has not submitted evidence sufficient to establish that, as a result of his employment injuries, he sustained greater permanent impairment than that previously awarded. The medical evidence must include a description of any physical impairment in sufficient detail so that the claims examiner and others reviewing the file would be able to clearly visualize the impairment and the resulting restrictions and limitations.¹³ Appellant did not meet his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established his entitlement to an additional schedule award.

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(b) (January 2010).

¹³ See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 4, 2010 is affirmed.

Issued: August 22, 2011
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