

discectomy and low back fusion which was performed on January 8, 2007. Appellant received compensation benefits.

OWCP referred appellant for a second opinion examination with Dr. Steven J. Lancaster, a Board-certified orthopedic surgeon, regarding her ability to work and whether she sustained permanent impairment.² In an October 8, 2008 report, Dr. Lancaster noted appellant's history of injury and treatment. He advised that appellant had no permanent impairment. Dr. Lancaster noted that, while appellant's physician had found seven percent impairment of the spine, she had no ratable impairment of any extremity under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*).

On September 23, 2009 appellant filed a claim for a schedule award. In a September 29, 2009 letter, OWCP notified her that schedule awards were not payable for impairment to the back. Appellant was asked to identify the extremity for which she claimed impairment.

In a letter dated November 2, 2009, appellant's representative provided OWCP with an impairment rating from Dr. Arkam Rehman, a Board-certified physiatrist. In an August 10, 2008 report, Dr. Rehman referred to the fifth edition of the A.M.A., *Guides*. He opined that appellant had an impairment of 10 to 13 percent of the whole person under the lumbar DRE category 3 classification. Dr. Rehman opined that under the Florida "PIR" appellant had an impairment of seven percent.

By letter dated November 6, 2009, OWCP sought an opinion on impairment of the lower extremities under the sixth edition of the A.M.A., *Guides*. In a January 4, 2010 report, Dr. Rehman reiterated the findings contained in his August 10, 2008 report. He opined that appellant had an impairment of 10 to 13 percent of the whole person.

On January 12, 2010 OWCP referred the case file to the Office medical adviser. In a report dated January 12, 2010, the medical adviser noted that Dr. Lancaster had found no lower extremity impairment. Furthermore, he noted that Dr. Rehman opined that appellant had an impairment of 10 to 13 percent but did not explain the basis for the determination.

By letter dated January 19, 2010, OWCP again wrote to Dr. Rehman to request clarification regarding his impairment rating. In a February 1, 2010 report and February 11, 2010 impairment worksheet, Dr. Rehman repeated his rating.

In a February 18, 2010 report, OWCP's medical adviser determined that appellant had no impairment of the lower extremities. While Dr. Rehman provided a whole person rating of 13 percent, the Office did not base schedule awards on impairment of the spine or to the whole person. The medical adviser opined that there was no objective basis to support any impairment to either leg.

By decision dated February 22, 2010, OWCP denied appellant's claim for a schedule award. It found that the medical evidence did not establish permanent impairment to either leg based on the accepted lumbar condition.

² Appellant's physicians previously stated that appellant had spine or whole person impairment.

By letter dated March 3, 2010, appellant's representative requested a telephonic hearing, which was held on June 8, 2010.

In the May 20, 2010 report, Dr. William Grant, a Board-certified internist, noted appellant's history of injury and treatment and explained that he conducted a telephone interview but did not examine appellant. He reported bilateral leg weakness and numbness. Dr. Grant diagnosed lumbar strain and herniated disc at the L5-S1 levels. He referred to Table 16-12 and opined that appellant had an impairment of 23 percent of the right and left lower extremities. In the May 27, 2010 report, Dr. Grant reiterated the findings provided in his May 20, 2010 report. As to a physical examination, he noted that appellant related that she had limited range of motion of the lumbar spine. Dr. Grant diagnosed L5-S1 postlaminectomy syndrome, low back pain and bilateral sciatica. He opined that appellant had 23 percent impairment of the right and left lower extremities.

By decision dated July 27, 2010, OWCP's hearing representative affirmed the February 22, 2010 decision.

LEGAL PRECEDENT

The schedule award provision of FECA,³ and its implementing federal regulations,⁴ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

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.⁷ 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, as the schedule award provisions of the Act 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.⁸

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ 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).

⁷ *Pamela J. Darling*, 49 ECAB 286 (1998).

⁸ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

ANALYSIS

The Board finds that appellant is not entitled to a schedule award. OWCP accepted her claim for lumbar sprain and displacement of the disc at L5-S1 without myelopathy. It approved surgical discectomy and low back fusion which was performed on January 8, 2007. Appellant failed to establish any permanent impairment of her legs in accordance with the sixth edition of the A.M.A., *Guides*.

In an October 8, 2008 report, Dr. Lancaster, the second opinion physician, reviewed appellant's history, examined her and rated permanent impairment. He determined that appellant had no ratable impairment to either extremity based on her accepted condition.

The reports from Dr. Rehman dated August 10, 2008 and January 4, 2010 provided an impairment rating of 10 to 13 percent of the whole person. The Board notes that appellant is not entitled to a schedule award based on impairment to her back or a whole person rating. Neither FECA nor the implementing federal regulations provide for a schedule award for impairment to the back or to the body as a whole. The back is specifically excluded from the definition of "organ" under the Act.⁹ Thus, Dr. Rehman's finding that appellant has whole person impairment is insufficient to warrant an impairment finding under the statute.

The Office medical adviser properly reviewed the medical record and found no basis for rating impairment to a scheduled member of the body.¹⁰ He noted that Dr. Rehman's whole person rating, which was based on appellant's spinal impairment, was not in reference to a scheduled member of the body.¹¹ The medical adviser found that there was no objective basis to rate impairment to either lower extremity resulting from the accepted lumbar conditions. Therefore, there was no ratable impairment.

Prior to the hearing representative's July 27, 2010 decision, appellant also submitted May 20 and 27, 2010, reports from Dr. Grant who opined that appellant had 23 percent impairment of each leg. Although Dr. Grant referenced the sixth edition of the A.M.A., *Guides* and rated impairment to appellant's legs, his report is of diminished probative value as he did not actually examine appellant but based his opinion on a telephone interview. He also did not address, if any, medical reports he reviewed or considered in reaching his impairment rating. Unlike a situation where OWCP's medical adviser, consistent with OWCP procedures, applies the findings of an examining physician to the A.M.A., *Guides*,¹² it is not clear how Dr. Grant arrived at his findings relative to appellant's condition other than from his telephone interview. The Board notes that the A.M.A., *Guides* contemplate that a rating physician shall review medical records reflecting the past medical history along with the patient's presentation of the current history. It is contemplated that the physician shall also conduct a physical examination.¹³

⁹ *Terry E. Mills*, 47 ECAB 309 (1996); see 5 U.S.C. § 8101(19).

¹⁰ The Board notes that it is appropriate for an OWCP medical adviser to review the clinical findings of the treating physician to determine the permanent impairment. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3 (January 2010).

¹¹ *Id.*

¹² See *supra* note 10.

¹³ See A.M.A., *Guides* 28.

As Dr. Grant did not conduct an impairment evaluation consistent with the A.M.A., *Guides*, his opinion is of diminished probative value and insufficient to establish that appellant has ratable impairment of a scheduled body member causally related to her accepted conditions.¹⁴

Appellant did not submit any other medical evidence to support that she sustained permanent impairment. The Board finds that she has not established entitlement 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 met her burden of proof to establish entitlement to a permanent impairment to a scheduled member of the body entitling her to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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

¹⁴ See *J.G.*, Docket No. 09-1128 (issued December 7, 2009) (an attending physician's report is of little probative value where the A.M.A., *Guides* are not properly followed).