



herniated discs at L2-3 and L5-S1. In a May 15, 2009 decision, the Board found that, while it had properly terminated monetary compensation for refusal of suitable work on September 12, 2006, subsequent evidence regarding psychiatric treatment required further development of the evidence.<sup>2</sup> The history of the case as provided by the Board in the May 15, 2009 decision is incorporated herein by reference.

On April 27, 2010 appellant claimed a schedule award. OWCP referred the case to its medical adviser, for review of an April 12, 2005 report from Dr. Michael Smith, an attending orthopedic surgeon and an opinion as to a permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In the April 12, 2005 report, Dr. Smith provided a history and results on examination. The examination results included range of motion for the shoulders, elbows, hips and back. Dr. Smith diagnosed chronic, symptomatic, post-traumatic injury of the cervical spine, thoracic and lumbar spine derangement of the right and left shoulder, with musculotendinous, bursal and capsular damage. He stated that the neck, shoulder and back symptoms were the result of the work injury.

In a report dated May 29, 2010, OWCP's medical adviser reviewed the magnetic resonance imaging (MRI) scan results and the April 12, 2005 report from Dr. Smith. The medical evidence showed no permanent impairment to the upper or lower extremities. As to the arms, OWCP's medical adviser stated that the evidence showed no loss of sensation, range of motion or muscle weakness. With respect to the legs, the medical adviser found no evidence of atrophy, loss of sensation or weakness.

By decision dated July 15, 2010, OWCP determined that appellant was not entitled to a schedule award as he had not established any permanent impairment due to the accepted injury.

Appellant requested reconsideration by letter dated September 7, 2010, stating that he was submitting "new" evidence from Dr. Harlan Bleeker, a Board-certified orthopedic surgeon, who reported stocking hypalgesia<sup>3</sup> in the left leg. In a June 30, 2004 report, Dr. Bleeker reviewed a history of injury and findings on examination.<sup>4</sup> He opined that appellant was temporarily totally disabled. Dr. Bleeker noted in his examination that appellant has stocking hypalgesia from groin to toe in the left leg.

By decision dated December 8, 2010, OWCP reviewed the case on its merits. It denied modification of the prior decision.

### **LEGAL PRECEDENT**

Section 8107 of FECA 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

---

<sup>2</sup> Docket No. 08-2306 (issued May 15, 2009). The Board also issued an order remanding the case for further development on this issue after the filing of the current appeal, Docket No. 10-1481 (issued April 5, 2011).

<sup>3</sup> A hypalgesia is a diminished sense of pain. See *Dorland's Medical Dictionary* (2007).

<sup>4</sup> Dr. Bleeker was a second opinion physician whose report was previously of record.

the permanent impairment of the scheduled member or function.<sup>5</sup> Neither FECA 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 justice for all claimants OWCP has adopted A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>6</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.<sup>7</sup>

Not all medical conditions accepted by OWCP result in permanent impairment to a scheduled member.<sup>8</sup> It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.<sup>9</sup>

### ANALYSIS

Appellant sought a schedule award pursuant to 5 U.S.C. § 8107 for his accepted employment injuries of cervical and lumbar strains, as well as herniated discs at L2-3 and L5-S1. As noted above, any decision issued after May 1, 2009 must be based on the sixth edition of the A.M.A., *Guides*. The only medical report of record addressing a permanent impairment under the A.M.A., *Guides* is the May 29, 2010 report from OWCP's medical adviser. In this report, OWCP's medical adviser reviewed an April 12, 2005 report from attending physician, Dr. Smith, which was the most recent report with detailed findings on physical examination.<sup>10</sup> The medical adviser reviewed the results from Dr. Smith and found no impairment under the A.M.A., *Guides*. Dr. Smith noted the lack of findings with respect to sensory or motor impairment to a scheduled member.

On reconsideration, appellant resubmitted a June 30, 2004 report from a second opinion physician, Dr. Bleeker. The record indicates Dr. Bleeker had not been asked to provide an opinion with regards to permanent impairment and did not provide an opinion. Appellant stated that Dr. Bleeker referred to a stocking hypalgesia in the left leg. The Board notes that to support a permanent impairment there must a detailed description of the impairment by the physician.<sup>11</sup> Dr. Bleeker did not provide a detailed description of a sensory impairment. Moreover, as noted by OWCP, the report of Dr. Smith was a more recent medical report.

The Board finds that there is no probative medical evidence of record to establish any ratable permanent impairment to a scheduled member of the body resulting from the accepted

---

<sup>5</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).

<sup>6</sup> *A. George Lampo*, 45 ECAB 441 (1994).

<sup>7</sup> FECA Bulletin No. 09-03 (March 15, 2009).

<sup>8</sup> *Thomas P. Lavin*, 57 ECAB 353 (2006).

<sup>9</sup> *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>10</sup> OWCP procedures indicated that a medical adviser may review a report from the attending physician and provided an opinion as to permanent impairment. See *Tommy R. Martin*, 56 ECAB 273 (2005).

<sup>11</sup> See *Peter C. Belkind* 56 ECAB 580 (2005).

employment injury. It is appellant's burden to establish a schedule award, and he did not meet his burden in this case. Appellant may request a schedule award in the future based on medical evidence showing progression of an employment-related condition resulting in permanent impairment to a scheduled member or function of the body.

On appeal, appellant stated that he felt that he did have a permanent impairment of diminished sensitivity in the left leg, and resubmitted the June 30, 2004 report from Dr. Bleeker. As the Board noted above, Dr. Bleeker did not provide a detailed description of a sensory impairment, did not offer an opinion as to permanent impairment, and his report was not the most current of record. Appellant may submit new evidence to OWCP regarding a permanent impairment, but the evidence of record is not sufficient to establish entitlement to a schedule award under 5 U.S.C. § 8107.

**CONCLUSION**

The Board finds that appellant is not entitled to a schedule award under 5 U.S.C. § 8107 as the medical evidence does not establish a ratable employment-related permanent impairment to a schedule member or function of the body.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 8, 2010 is affirmed.

Issued: November 9, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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