



experiencing left hip pain and burning sensation in back of her left thigh. OWCP accepted her claim for lumbar sprain and lumbar radiculitis. She filed a schedule award claim.

Dr. Tariq Mirza, the attending physiatrist, evaluated appellant's impairment on May 6, 2010 using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He diagnosed lumbar strain, coccyx strain and lumbar disc bulges. Applying Table 15-3, page 384 of the A.M.A., *Guides*, Dr. Mirza determined that appellant had a five percent impairment of the whole person due to a lumbar spine injury.

Dr. Aubrey A. Swartz, an orthopedic surgeon and OWCP referral physician, evaluated appellant's impairment under the sixth edition of the A.M.A., *Guides*. He reviewed her history, complaints, imaging studies and other medical records. Dr. Swartz' physical examination failed to reveal any objective neurologic findings. He observed that, with respect to all the examinations performed by Dr. Mirza, there were no neurologic findings. Further, imaging studies revealed no nerve root or spinal cord compression. "Therefore, we have at this time complaints of pain in the low back and coccyx, primarily and without any neurologic findings or evidence to support any neurologic injury or deficits." Applying Table 16-12, page 534 of the A.M.A., *Guides*, Dr. Swartz determined that appellant fit the class 0 category with no impairment.

On October 1, 2010 OWCP denied appellant's schedule award claim. It found that the medical record failed to demonstrate a measurable impairment to her lower extremities.

On appeal, appellant argues that Dr. Mirza refused to rate her under the sixth edition of the A.M.A., *Guides*. She alleges that Dr. Swartz was anti-claimant; she took exception with his examination of her. Appellant states that he failed to take into account her pain and medication. She asks the Board to remand her case for a new second-opinion evaluation.

### **LEGAL PRECEDENT**

Section 8107 of FECA<sup>2</sup> authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.<sup>3</sup>

### **ANALYSIS**

Dr. Mirza's impairment rating did not support appellant's schedule award claim. He applied the fifth edition of the A.M.A., *Guides*. Dr. Mirza applied the chapter for determining impairment of the spine. He expressed that impairment in terms of the "whole person." Physicians must use the sixth edition of the A.M.A., *Guides* for all ratings on or after

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

May 1, 2009. No claimant is entitled to a schedule award for impairment of the spine or back.<sup>4</sup> FECA does not authorize the payment of schedule awards for impairment of the whole person.<sup>5</sup>

OWCP properly sought a second opinion from Dr. Swartz, who applied the correct edition of the A.M.A., *Guides*, but he improperly referred to Table 16-12, page 534. That table covers lower extremity impairment due to peripheral nerve injury. Appellant's employment injury is not a peripheral nerve injury; it is lumbar radiculitis due to a spinal nerve injury. The sixth edition does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. The A.M.A., *Guides* has offered an approach to rating spinal nerve impairments consistent with sixth edition methodology.<sup>6</sup> OWCP has adopted this approach for rating impairment to the upper or lower extremities caused by a spinal injury.<sup>7</sup>

The process for rating such impairment begins with identifying the nerve involved. Dr. Swartz could not identify an involved nerve because, notwithstanding appellant's complaint of pain, there were no neurologic findings on examination. Indeed, he noted that, with respect to all the examinations performed by Dr. Mirza, there were no neurologic findings. When Dr. Mirza rated her, he did not diagnose a spinal nerve injury. Further, imaging studies revealed no nerve root or spinal cord compression.

Objective findings are always given the greater weight of evidence over subjective complaints.<sup>8</sup> With no objective physical, imaging or electromyographic findings, Dr. Swartz was unable to verify that descending 16 flights of stairs caused a spinal nerve injury. Thus, no impairment rating can be made under the A.M.A., *Guides*' Proposed Table 2 (lower extremity impairment due to spinal nerve injury). The Board will affirm OWCP's October 1, 2010 decision denying appellant's schedule award claim. Appellant's unverifiable radicular root pain is nonratable.

Appellant argues that her physician refused to rate her under the sixth edition. But it is she who carries the burden of proof to establish her claim. OWCP fulfilled its function by securing, at its expense, a second-opinion evaluation under the sixth edition. The mere fact that the second-opinion evaluation showed no ratable impairment is no basis for remanding the case to OWCP for another evaluation. The record does not support appellant's allegation that Dr. Swartz was anti-claimant or that his evaluation of her was critically flawed.

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<sup>4</sup> E.g., *Timothy J. McGuire*, 34 ECAB 189 (1982).

<sup>5</sup> E.g., *Ernest P. Govednick*, 27 ECAB 77 (1975).

<sup>6</sup> Rating Spinal Nerve Extremity Impairment using the sixth edition, the A.M.A., *Guides* Newsletter (A.M.A., Chicago, IL), July/August 2009.

<sup>7</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010) (Exhibit 1, 5); *T.T.*, Docket No. 10-880 (issued November 9, 2010).

<sup>8</sup> A.M.A., *Guides* 495; *see id.* at 561 (subjective complaints without objective physical findings or significant clinical abnormalities are generally assigned class 0 and have no ratable impairment); *id.* at 531 (neurologic impairment is assessed only for objective involvement of specific nerves).

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's March 24, 2009 employment injury caused no ratable impairment of her lower extremities.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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