



## **FACTUAL HISTORY**

Appellant, a 66-year-old laborer/custodian, has an accepted claim for aggravation of herniated lumbar disc, which arose on or about November 3, 2008.<sup>2</sup> On February 2, 2010 she underwent OWCP approved surgery, which included a partial L4-5 microdiscectomy performed by Dr. K. Craig Boatright, a Board-certified orthopedic surgeon. Appellant received wage-loss compensation following surgery. On May 10, 2010 she resumed work without restrictions. Appellant filed a claim for a schedule award (Form CA-7).

In an August 2, 2010 report, Dr. Boatright found 12 percent whole person impairment due to the accepted lumbar spine injury. The rating was based on diagnosis-related estimate Lumbar Category 3 impairment under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2001).<sup>3</sup> Dr. Boatright noted that appellant had a history of herniated disc with resolution of radiculopathy postoperatively. Appellant was reportedly doing very well at the time of the August 2, 2010 examination. Dr. Boatright noted that she had a twinge of pain every now and then that had resolved. He further noted that appellant felt at times that her right leg was weaker than her left; but on physical examination he noted 5/5 strength bilaterally. Dr. Boatright also noted a normal gait, a healed incision and no sign of deep vein thrombosis in the lower extremities. He concluded that appellant had reached maximum medical improvement.

On August 6, 2010 OWCP advised Dr. Boatright that schedule awards were not granted for whole person impairments. It requested that he provide an impairment rating of the lower extremities in accordance with the sixth edition of the A.M.A., *Guides* (2008). In an August 23, 2010 report, Dr. Boatright reiterated that, under the fifth edition of the A.M.A., *Guides*, appellant had 16 percent impairment of the lumbar spine or 12 percent whole person impairment.

OWCP referred the record to Dr. Howard Hogshead, a district medical adviser. In a September 13, 2010 report, Dr. Hogshead noted that the fifth edition of the A.M.A., *Guides* (2001) was no longer applicable and whole person impairment ratings were not accepted. He further noted that Dr. Boatright's August 2, 2010 examination indicated that there was no ongoing radiculopathy. Dr. Hogshead explained that OWCP only recognized impairment of the extremity resulting from spinal nerve impairment and, in the absence of any radiculopathy, there was no basis for an impairment rating. He found no impairment of either lower extremity.

In a decision dated September 27, 2010, OWCP denied appellant's claim for a schedule award.

Appellant filed a request for review of the written record, but did not submit any new medical evidence regard the extent impairment under the A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

By decision dated February 2, 2011, an OWCP hearing representative affirmed the September 27, 2010 decision.

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<sup>2</sup> OWCP specifically did not accept right hip tendinitis.

<sup>3</sup> See Table 15-3, A.M.A., *Guides* 384 (5<sup>th</sup> ed. 2001).

## LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>4</sup> FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>5</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).<sup>6</sup>

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or the implementing regulations.<sup>7</sup> Neither, FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole.<sup>8</sup>

## ANALYSIS

The sixth edition of the A.M.A., *Guides* (2008) provides a specific methodology for rating spinal nerve extremity impairment.<sup>9</sup> It provides for rating impairment to the extremities rather than to the spine.<sup>10</sup> Because appellant did not have any ongoing radiculopathy as noted by Dr. Boatright in his August 2, 2010 report, Dr. Hogshead found that she did not have any ratable lower extremity impairment.

Appellant faults OWCP for not referring her to a physician for an impairment rating under the sixth edition of the A.M.A., *Guides*. The Board notes that appellant bears the burden of establishing entitlement to benefits under FECA.<sup>11</sup> OWCP advised her physician on August 6, 2010 to provide a lower extremity impairment rating, but Dr. Boatright did not comply. Appellant's claim was not denied because of an inaccurate or incomplete impairment rating, but because the examination findings provided by her treating physician did not support any lower extremity impairment under the sixth edition of the A.M.A., *Guides* (2008), due to her accepted lumbar condition. Dr. Hogshead properly utilized findings provided by appellant's physician to

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<sup>4</sup> For a total loss of use of a leg, an employee shall receive 288 weeks of compensation. 5 U.S.C. § 8107(c)(2).

<sup>5</sup> 20 C.F.R. § 10.404 (2010).

<sup>6</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

<sup>7</sup> *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

<sup>8</sup> 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a); see *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

<sup>9</sup> *Supra* note 7, Chapter 3.700, Exhibit 4.

<sup>10</sup> *Id.*

<sup>11</sup> *E.g.*, *G.T.*, 59 ECAB 447, 450-51 (2008).

determine that the reported physical examination did not demonstrate any lower extremity impairment.<sup>12</sup> The Board finds that his September 13, 2010 impairment rating conforms to the A.M.A., *Guides* (6<sup>th</sup> ed. 2008) and represents the weight of the medical evidence.

Appellant may submit new medical evidence in support of her schedule award claim, with a written request for reconsideration to OWCP, pursuant to 20 C.F.R. § 10.606.

**CONCLUSION**

Appellant has not established that she has a ratable impairment of the lower extremities.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 2, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 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

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<sup>12</sup> According to the Procedure Manual, the attending physician should describe the impairment in sufficient detail to permit clear visualization of the impairment and the restrictions and limitations which have resulted. The description should include the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, disturbance of sensation, or other pertinent description of the impairment. Under the sixth edition of the A.M.A., *Guides* (2008), clinical history is also important in the diagnosis-based grid that ranks impairment within classes of severity. *Supra* note 7, Chapter 3.700.3a(2).