

FACTUAL HISTORY

On October 1, 1999 appellant, then a 51-year-old x-ray technologist, filed a traumatic injury claim, alleging that he injured his back lifting a patient on September 28, 1999. On October 14, 1999 OWCP accepted that he sustained an employment-related lumbosacral strain. The claim was also accepted for a herniated disc at L4-5. On April 4, 2000 Dr. Thomas A. Wilson, Jr., a Board-certified neurosurgeon, performed a lumbar microdiscectomy. Appellant returned to modified duty. By decision dated February 26, 2001, OWCP determined that his actual earnings in his modified position fairly and reasonably represented his wage-earning capacity. Appellant retired on disability effective January 6, 2006. On November 29, 2006 he elected FECA benefits.²

On May 20, 2010 appellant filed a schedule award claim. A January 19, 2010 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated the previous surgery and bilateral foraminal stenosis at L4-5 and L5-S1 with rather diffuse disc bulging at L5-S1. A July 13, 2010 functional capacity evaluation was determined to be invalid due to significant lack of effort and inconsistencies.

By letter dated August 10, 2010, OWCP informed appellant of the type evidence needed to support his schedule award claim. Appellant was asked to provide a report by his physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).³

A September 20, 2010 electromyography (EMG) study of the lower extremities was interpreted as normal without evidence of radiculopathy. In a September 27, 2010 report, Dr. Ronald T.Y. Moon, an osteopath, advised that appellant reached maximum medical improvement on September 22, 2010, that the nerve root involved was L4 and that in accordance with the fifth edition of the A.M.A., *Guides*, appellant had a five percent impairment due to loss of function from sensory deficit, pain or discomfort and a zero loss due to decreased strength.

By report dated October 8, 2010 report, OWCP's medical adviser reviewed the medical evidence and identified the nerve root involved as L4, with only a sensory impairment. In accordance with the sixth edition of the A.M.A., *Guides*, under Table 16-11, appellant had a mild or class 1, impairment, which he rated at one percent. The medical adviser noted that, under proposed Table 2, as found in Exhibit 4 of section 3.700 of OWCP procedures, appellant had a mild sensory impairment which he rated as class 1 with a default value of C, for one percent impairment. The medical adviser then applied the net adjustment formula, finding no change,

² On May 4, 2007 the employing establishment informed OWCP that it had continued to accommodate appellant's modified duty until he was removed for disciplinary reasons effective November 18, 2005. Appellant retired on disability effective January 6, 2006. By decision dated May 8, 2007, OWCP denied his claim that he sustained a recurrence of disability on January 6, 2006. In decisions dated October 25, 2007 and January 14, 2008, OWCP's Branch of Hearings and Review denied appellant's requests for a hearing on the grounds that the requests were untimely filed. By decision dated April 23, 2008, OWCP denied modification of the prior decision. In a nonmerit decision dated July 18, 2008, it denied appellant's reconsideration request.

³ A.M.A., *Guides* (6th ed. 2008).

and concluded that appellant had one percent right leg impairment, with the date of maximum medical improvement of September 22, 2010.

In an October 27, 2010 decision, appellant was granted a schedule award for a one percent impairment of the right leg or a total of 2.88 weeks to run from September 22 to October 12, 2010.

On November 10, 2010 appellant requested a review of the written record. He submitted additional medical evidence but did not submit an impairment evaluation. By decision dated February 17, 2011, OWCP's hearing representative affirmed the October 27, 2010 decision.⁴

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing federal regulations⁶ 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.⁷ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.⁸ For decisions issued after May 1, 2009, the sixth edition is to be used.⁹

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under FECA for injury to the spine.¹⁰ In 1960, amendments to FECA 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 FECA 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.¹¹

⁴ Following appellant's appeal to the Board, upon examination of the case record, it was determined that the February 17, 2011 decision of OWCP's hearing representative was not contained in the record. By order dated November 29, 2011, the Board asked that OWCP complete the record. OWCP complied, and the case record is now complete.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

⁹ FECA Bulletin No. 09-03 (issued March 15, 2009).

¹⁰ *Pamela J. Darling*, 49 ECAB 286 (1998).

¹¹ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. The A.M.A., *Guides* for decades has offered an alternative approach to rating spinal nerve impairments.¹² OWCP has adopted this approach for rating impairment of the upper or lower extremities caused by a spinal injury, as provided in section 3.700 of its procedures.¹³ Specifically, it will address lower extremity impairments originating in the spine through Table 16-11¹⁴ and upper extremity impairments originating in the spine through Table 15-14.¹⁵

In addressing lower extremity impairments, due to peripheral or spinal nerve root involvement, the sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH) and if electrodiagnostic testing were done, Clinical Studies (GMCS).¹⁶ The net adjustment formula is (GMFH - CDX) + (GMCS - CDX).¹⁷

ANALYSIS

The Board finds that appellant has a one percent impairment of the right leg. OWCP accepted that he sustained a lumbosacral strain and herniated disc at L4-5 on September 28, 1999 while lifting a patient. The Board finds that the weight of the medical evidence rests with the opinion of OWCP's medical adviser, the only impairment evaluation of record that conforms to the sixth edition of the A.M.A., *Guides*. By letter dated August 10, 2010, OWCP informed appellant that in order to support his schedule award claim, he should submit a report from his physician that was in accordance with the sixth edition of the A.M.A., *Guides*. In a September 27, 2010 report, Dr. Moon, an attending osteopath, advised that appellant reached maximum medical improvement on September 22, 2010. He indicated that the nerve root involved was L4 and that, under the fifth edition of the A.M.A., *Guides*, appellant had a five percent impairment due to loss of function from sensory deficit, pain or discomfort and a zero loss due to decreased strength. As noted, subsequent to May 1, 2009, the sixth edition of the A.M.A., *Guides* is to be used in determining impairments. Dr. Moon based his impairment rating on the fifth edition. A medical opinion not based on the appropriate edition of the A.M.A., *Guides* is of diminished probative value in determining the extent of a claimant's permanent impairment.¹⁸

By report dated October 8, 2010 report, OWCP's medical adviser reviewed the medical evidence and identified the affected nerve root as L4, with sensory impairment. He advised that,

¹² *Rozella L. Skinner*, 37 ECAB 398 (1986).

¹³ FECA Transmittal No. 10-04 (issued January 9, 2010); Federal (FECA) Procedure Manual, *supra* note 8.

¹⁴ *Supra* note 3 at 533.

¹⁵ *Id.* at 425.

¹⁶ *Supra* note 14.

¹⁷ *Id.* at 521.

¹⁸ *Shalanya Ellison*, 56 ECAB 150 (2004).

in accordance with the sixth edition of the A.M.A., *Guides*, under Table 16-11, appellant had a mild or class 1, impairment, which he rated at one percent. The medical adviser then indicated that, under proposed Table 2, as found in Exhibit 4 of section 3.700 of OWCP procedures, appellant had a mild sensory impairment which he rated as class 1 with a default value of C for one percent impairment. He then applied the net adjustment formula, finding no change and concluded that appellant had one percent right lower extremity impairment, with the date of maximum medical improvement of September 22, 2010. While appellant submitted additional medical evidence, he did not submit an impairment evaluation.

The Board finds that OWCP's medical adviser properly reviewed the medical record and evaluated appellant's right lower extremity impairment in accordance with OWCP procedures found at Exhibit 4 of section 3.700. There is no medical evidence establishing a greater impairment.

Regarding appellant's argument on appeal that he has a greater impairment than awarded, the amount payable pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, hobbies or other lifestyle activities.¹⁹ Section 8107 provides a compensation schedule for payment of awards for permanent impairment of listed body members. The schedule establishes how many weeks of compensation an employee will receive in the event of total functional loss or dismemberment. Compensation for partial loss of use of a scheduled member is awarded for a proportionate number of weeks.²⁰ For complete loss of use of the leg, the maximum number of weeks of compensation is 288. Since appellant's permanent impairment of his right leg is one percent, he is entitled to one percent of 288 weeks or 2.88 weeks of compensation. Under the schedule award provisions, he is entitled to no more.²¹

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 did not establish that he has more than a one percent impairment of the right lower extremity.

¹⁹ *Denise L. Crouch*, 57 ECAB 161 (2005).

²⁰ 5 U.S.C. § 8107; *see Carol A. Smart*, 57 ECAB 340 (2006).

²¹ *See R.O.*, Docket No. 10-1777 (issued March 16, 2011).

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2011 and October 27, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 1, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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