

FACTUAL HISTORY

On May 14, 2002 appellant, then a 45-year-old medical clerk, filed a traumatic injury claim alleging that on that date she pulled a muscle in her neck while lifting medical records. On July 3, 2002 OWCP accepted her claim for cervicalgia. On April 14, 2003 it accepted appellant's claim for a recurrence.

The medical records note a history of prior problems with pain in appellant's neck. In a statement dated April 23, 2004, appellant indicated that her original date of injury was September 24, 1999 when she was injured at work when she fell to the floor.² In a January 17, 2003 report, Dr. Carlos E. Rivera-Tavarez, a Board-certified physiatrist with Board-certified subspecialties in pain medicine and sports medicine, noted that she has had pain in the neck to the shoulders, upper extremities and down the spine and low back associated with headaches. Appellant's symptoms had been ongoing since 1999 when she sustained a fall while walking. In an May 23, 2003 report, Dr. Rivera-Tavarez compared a magnetic resonance imaging (MRI) scan of her cervical spine obtained on July 13, 2001 with that of June 10, 2002. The studies were similar with mild degenerative disc disease and spondylosis at C4-5 and a left paracentral disc protrusion at C5-6. Dr. Rivera-Tavarez listed his impressions as chronic pain, probable myofascial pain, cervical spondylosis, probable joint pain, lumbar spondylosis and cervicogenic headaches. He did not provide any rating of impairment.

In a report dated August 28, 2006, Dr. John D. Brophy, a Board-certified neurosurgeon, obtained a history that in September 1999, after a fall at work, appellant developed neck pain. An MRI scan in July 2001 demonstrated spondylosis at C5 and C5-6 with a disc bulge on the left at C5-6. In the fall of 2005 appellant developed increasing neck and bilateral upper extremity paresthesias extending to the fingers. Dr. Brophy diagnosed chronic neck pain and upper extremity paresthesias associated with left C6-7 herniated nucleus pulposus without definite clinical evidence of myelopathy and possible mild left C6 cervical radiculopathy. He did not address impairment.

On October 3, 2006 appellant underwent a C5-6 cervical fusion with iliac crest bone graft.

In a June 29, 2009 report, Dr. F. Gregory Wolf, a Board-certified orthopedic surgeon, reviewed the C5-6 anterior cervical discectomy and fusion on October 3, 2006 and advised that appellant had permanent impairment as a result of the surgery. Pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), appellant had a 25 percent impairment of the whole person under Table 15-5 due to her cervical condition.

On October 14, 2009 appellant filed a claim for a schedule award.

By decision dated December 9, 2009, OWCP denied appellant's claim for a schedule award. It determined that the medical evidence of record did not support any permanent impairment to the upper extremities based on the accepted cervical condition.

² OWCP accepted cervical strain and assigned OWCP File No. xxxxxx955.

On December 14, 2009 appellant requested an oral hearing before an OWCP hearing representative. At the March 25, 2010 hearing, OWCP's hearing representative stated that the record would be open for 30 days for the submission of additional medical evidence. No new medical reports were submitted by appellant.

By decision dated June 9, 2010, OWCP's hearing representative denied a schedule award due to the lack of any medical evidence establishing that appellant sustained permanent impairment as a result of the May 14, 2002 work injury.

On December 21, 2010 appellant requested reconsideration. In a May 24, 2010 report, Dr. Martin Fritzhand, a specialist in occupational health, reviewed her history and that she underwent a C5-6 anterior cervical discectomy with interbody fusion in 2006. He utilized the A.M.A., *Guides* (5th ed.) to rate spinal nerve root impairment. Dr. Fritzhand concluded that appellant had a permanent impairment to each upper extremity of six percent. He noted that Table 16-13 of the A.M.A., *Guides* allowed a maximum percent upper extremity impairment due to sensory deficit for the C6 nerve root of eight percent. Table 16-10 provided a 75 percent sensory deficit for grade 2/5. Dr. Fritzhand found that appellant could not perform certain activities due to pain and numbness involving the upper extremities and had a 6 percent impairment to each upper extremity (75 percent times 8 percent).

By decision dated February 4, 2011, OWCP denied modification of the June 9, 2010 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim, including that she sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.³

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

³ See *S.S.*, Docket No. 10-1536 (issued March 18, 2011) (The Board found that appellant was not entitled to a schedule award as she did not establish that she sustained a permanent impairment causally related to her work injury); *Bobbie F. Cowart*, 55 ECAB 476 (2004) (The Board determined that appellant did not establish that an employment-related condition contributed to her hearing loss and, therefore, it denied her claim for entitlement to a schedule award for her left ear).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

The schedule award provision of FECA⁵ and its implementing 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁸

ANALYSIS

OWCP accepted that, as a result of a May 14, 2002 employment injury, appellant sustained cervicalgia. Dr. Rivera-Tavarez reviewed her MRI scans obtained on July 13, 2001 and June 10, 2002 and found the results similar, with mild degenerative disc disease and spondylosis at C4-5 and left paracentral disc protrusion at C5-6. However, as these tests were diagnostic in nature, Dr. Rivera-Tavarez did not provide a discussion of permanent impairment.

Dr. Brophy noted that, after the September 24, 1999 employment injury, appellant developed neck pain. He diagnosed her with chronic neck pain and upper extremity paresthesias associated with a left C6-7 herniated disc and possible mild left C6 cervical radiculopathy. Appellant's surgery on October 3, 2006, a C5-6 cervical fusion, was not accepted by OWCP as causally related to her May 14, 2002 employment injury.

Dr. Wolf determined that appellant had a 25 percent impairment of the whole person, but never explained how the impairment related to the May 14, 2002 employment injury. Rather, he related the impairment to her October 3, 2006 surgery which was not accepted as related to the May 14, 2002 employment injury. Moreover, Dr. Fritzhand addressed permanent impairment in terms of a whole person rating of the cervical spine. It is well established that FECA does not provide for payment of a schedule award for loss of use of the back or spine.⁹

There is no evidence that appellant sustained permanent impairment as a result of the accepted cervicalgia condition that was related to her May 14, 2002 injury. Appellant did not establish work-related permanent impairment and OWCP properly denied her schedule award claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.*

⁸ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁹ See *Patricia J. Horney*, 56 ECAB 256 (2005).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish entitlement to schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 26, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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