

FACTUAL HISTORY

On February 26, 1969 appellant, then a 24-year-old laborer, sustained an injury in the performance of duty while loading trees onto a truck. OWCP accepted his claim for lumbosacral sprain.²

On July 6, 1993 OWCP terminated appellant's compensation for wage-loss and medical benefits on the grounds that the weight of the medical evidence, represented by the weight of an impartial medical specialist, established no remaining disability causally related to factors of employment. Appellant appealed to the Board, which reviewed the matter and found that OWCP met its burden of proof to terminate compensation³

In 2010, appellant claimed a schedule award for his February 26, 1969 employment injury. Having received no factual statement or medical evidence, OWCP denied the claim in a June 30, 2010 decision.

Following a telephone hearing before an OWCP hearing representative, appellant submitted a December 20, 2009 impairment evaluation from Dr. William N. Grant, a Board-certified internist, who provided a history of appellant's April 28, 1967 tractor injury. Dr. Grant noted appellant's current complaints, including constant low back pain and numbness running down the back of both legs. He diagnosed lumbar sprain/strain. Finding maximum medical improvement, Dr. Grant determined under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition 2001) that appellant had a 16 percent whole-person impairment due to abnormal motion of the lumbar spine. He converted this whole-person impairment to an 18 percent lumbar spine impairment.

On January 21, 2011 OWCP's hearing representative affirmed the denial of appellant's schedule award claim. The hearing representative noted that in 1993 appellant was found to have no disabling residuals of his accepted back and neck strains. Further, OWCP's hearing representative found Dr. Grant's rating to be of diminished probative value because he did not base it on an accurate statement of accepted facts and because he provided an impairment evaluation of the spine, which was not a covered member under FECA.

LEGAL PRECEDENT

FECA authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.⁴ Such loss or loss of use is known as permanent

² Appellant sustained a lumbosacral strain on April 28, 1967 when the tractor mower he was riding hit a hole and threw him off. On September 26, 1968 he sustained back contusions when a coworker dropped his end of a heavy load both were carrying. OWCP File No. xxxxxx886. On January 29, 1972 appellant sustained a consequential cervical strain in a motor vehicle accident while returning from treatment for his back.

³ Docket No. 94-875 (issued October 23, 1995).

⁴ 5 U.S.C. § 8107.

impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁵

ANALYSIS

Appellant's February 26, 1969 employment injury was accepted for lumbosacral sprain. OWCP terminated benefits for this injury on July 6, 1993 finding that the weight of the medical evidence established no remaining disability causally related to factors of employment. The Board affirmed, finding that it met its burden to justify the termination of appellant's compensation. When OWCP meets its burden to justify termination, the burden shifts to the claimant to establish that any subsequent condition or disability for which appellant seeks compensation is causally related to the accepted employment injury.⁶

Appellant has submitted no rationalized medical opinion to support that he continues to suffer from the effects of the February 26, 1969 employment injury. Dr. Grant, the evaluating internist, diagnosed lumbar sprain/strain, but he did not explain whether this was related to the accepted work injury of February 26, 1969, and he did not address the medical evidence that led to the termination of appellant's compensation in 1993. With no established connection between the condition for which appellant now seeks compensation and the accepted employment injury, appellant has no grounds to claim compensation for permanent impairment.

FECA provides compensation for the permanent loss or loss of use of specified members, functions and organs of the body. No schedule award is payable for a member, function or organ of the body not specified in FECA or the regulations.⁷ Because neither FECA nor the regulations provide compensation for the permanent loss of use of the back,⁸ a claimant is not entitled to such an award.⁹ Dr. Grant's 18 percent impairment rating for the lumbar spine does not support appellant's entitlement to a schedule award. His 16 percent rating for the whole person is also unresponsive. FECA does not authorize the payment of schedule awards for the permanent impairment of the "whole person."¹⁰ Rather, payment is authorized only for the permanent impairment of specified members, organs or functions of the body. Dr. Grant failed to

⁵ 20 C.F.R. § 10.404. As of May 1, 2009, any decision regarding a schedule award must be based on the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

⁶ *Wentworth M. Murray*, 7 ECAB 570 (1955); *Maurice E. King*, 6 ECAB 35 (1953) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

⁷ *William Edwin Muir*, 27 ECAB 579 (1976) (this principle applies equally to body members that are not enumerated in the schedule provision as it read before the 1974 amendment, and to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment).

⁸ FECA specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

⁹ *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).

¹⁰ *Ernest P. Govednick*, 27 ECAB 77 (1975).

address under the sixth edition of the A.M.A., *Guides* whether appellant had any impairment to either lower extremity due to the accepted injury.

Amendments to FECA modified the schedule award provisions to provide 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. As the schedule award provisions 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 originates in the spine.¹¹ OWCP accepted appellant's February 26, 1969 injury for lumbosacral sprain. There is no impairment rating of either lower extremity or explanation as to how the accepted injury caused permanent impairment of the legs.

The Board finds that appellant has not met his burden to establish that he is entitled to a schedule award for his February 26, 1969 employment injury. The Board will therefore affirm OWCP's January 21, 2011 decision denying his claim.

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 has not met his burden to establish that he is entitled to a schedule award for his February 26, 1969 employment injury.

¹¹ *Rozella L. Skinner*, 37 ECAB 398 (1986).

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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