

narrative statement, he noted repetitive activities such as bending, lifting and stooping. On May 6, 2004 OWCP accepted the claim for lumbosacral neuritis/radiculitis and bilateral sciatica. On October 28, 2004 appellant underwent an L4-5 laminectomy surgery. He worked intermittently in a part-time light-duty position then stopped working on April 4, 2007. OWCP accepted a recurrence of disability commencing April 4, 2007.

Appellant was referred to Dr. John Howard, a Board-certified orthopedic surgeon, for an opinion as to a permanent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition, hereinafter A.M.A., *Guides*). In a report dated October 20, 2011, Dr. Howard provided a history and results on examination. He identified the sciatic nerve under Table 16-12 of the A.M.A., *Guides*, finding that appellant had a mild or moderate sensory deficit, resulting in a default impairment of four percent to each leg. Dr. Howard found there would be no net adjustment, as the grade modifier for Functional History (GMFH) was one, the grade modifier for Clinical Studies (GMCS) and the grade modifier for Physical Examination (GMPE) were not applicable. He concluded that appellant had a four percent impairment to each leg.

In a report dated December 4, 2011, an OWCP medical adviser reviewed the medical evidence. He stated that peripheral nerve impairments should be calculated under *The Guides Newsletter* July/August 2009. Applying the relevant table for lower extremity impairments, the default for an L5 spinal nerve moderate sensory deficit was three percent. The medical adviser found no net adjustment based on the grade modifiers noted by Dr. Howard. With respect to maximum medical improvement, the medical adviser stated that it occurred on June 23, 2006.²

By decision dated January 3, 2012, OWCP issued a schedule award for a three percent impairment to each leg. The period of the award was 17.28 weeks from December 18, 2011.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.⁵ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶

² The record contains a report dated June 23, 2006 from Dr. Nicole Pham, a treating physician, stating that appellant had reached a permanent and stationary status.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ See *Ronald R. Kraynak*, 53 ECAB 130 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

⁶ *Supra* note 4.

For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁷ With respect to peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries under the sixth edition, OWCP procedures indicate that *The Guides Newsletter* “Rating Spinal Nerve Extremity Impairment Using the Sixth Edition” (July/August 2009) is to be applied.⁸ Using the tables under this newsletter, the class of impairment (CDX) is one, and then the default value is determined by identifying the spinal nerve and the degree of sensory or motor deficit. The default value (grade C) may be adjusted by using GMFH, Table 16-6, GMPE, Table 16-7 and GMCS, Table 16-8. The adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁹

ANALYSIS

In this case, OWCP issued a schedule award for a three percent permanent impairment to each leg based on the examination findings of Dr. Howard. Although Dr. Howard had applied Table 16-12 of the A.M.A., *Guides*, as noted above, it is *The Guides Newsletter* that must be used for nerve impairments to the legs from spinal injuries. Under *The Guides Newsletter*, a moderate sensory deficit for the L5 nerve is a three percent default impairment. Both Dr. Howard and the medical adviser found a grade modifier for functional history of one. A clinical studies grade modifier was not applicable, as there were no relevant clinical studies and the physical examination grade modifier was not applied as physical examination was used to determine the default impairment.¹⁰ Applying the formula noted above, there is no adjustment from the grade C impairment of three percent to each leg.

The Board accordingly finds that the probative medical evidence does not establish more than a three percent permanent impairment to each leg. OWCP’s medical adviser applied *The Guides Newsletter* in accord with established procedures.

The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the leg, the maximum number of weeks of compensation is 288 weeks. Since appellant’s impairment was six percent (three for each leg), he is entitled to six percent of 288 weeks, or 17.28 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.¹¹ In this case, OWCP’s medical adviser referred to a date of June 23, 2006. Appellant was receiving compensation for wage loss on and after June 23, 2006, and a claimant may not concurrently

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁸ See *G.N.*, Docket No. 10-850 (issued November 12, 2010); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

⁹ A.M.A., *Guides* 523. The net adjustment is up to +2 (grade E) or -2 (grade A).

¹⁰ See *id.* at 515-16.

¹¹ *Albert Valverde*, 36 ECAB 233, 237 (1984).

receive compensation under a schedule award and wage loss for disability.¹² Therefore the determination to begin the schedule award on December 18, 2011 was not adverse to appellant.

On appeal, appellant stated that he did not understand how the award was reduced from eight percent, based on Dr. Howard, to a three percent award, when Dr. Howard was the physician who examined him. The Board notes that appellant received a schedule award for three percent to each leg, for a total of six percent. The award was based on the examination by Dr. Howard, but as noted above, Dr. Howard did not apply *The Guides Newsletter* in accord with OWCP procedures. The only medical report properly applying *The Guides Newsletter* was OWCP's medical adviser. The Board finds this represented the weight of the medical evidence as to the percentage of impairment. Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing a progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that the evidence does not establish more than a three percent permanent impairment to each leg.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 3, 2012 is affirmed.

Issued: July 25, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹² *James A. Earle*, 51 ECAB 567 (2000).