



occurred while he was climbing up and down trailers and caused numbness in the neck, back, shoulder and legs.

In an April 25, 2008 medical note with an illegible signature, appellant was diagnosed with cervical and lumbar strain.

Appellant submitted the first two pages of a June 14, 2010 service-connected rating decision issued by the Department of Veterans Affairs (VA). He was rated to be 40 percent disabled due to spondylosis and degenerative joint disease of the lumbar spine, with radiation to both lower extremities; 20 percent disabled due to his spondylosis and degenerative disc disease of the cervical spine; and 10 percent disabled due to neuropathy of both upper extremities secondary to the disability of spondylosis and degenerative disc disease of the cervical spine.

On September 17, 2010 OWCP accepted appellant's claim for neck and lumbar sprain.

On November 30, 2010 OWCP received appellant's claim for a schedule award together with his November 29, 2012 statement, work history and work status reports with illegible signatures.<sup>2</sup> He advised that he was seeking a schedule award for his cervical and lumbar spinal conditions.<sup>3</sup>

On December 6, 2010 OWCP requested that appellant's treating physician, Dr. Keithan evaluate appellant's impairment according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The letter asked that appellant submit the requested information to OWCP within 30 days. No response was received by OWCP.

Appellant submitted a September 25, 2009 notice issued by the Social Security Administration, which found that he was entitled to monthly disability benefits.

In a May 13, 2004 medical report, Dr. James Hagler, a family practitioner, provided a diagnosis of appellant's conditions preexisting his April 21, 2008 injury.

In a January 25, 2011 decision, OWCP denied appellant's claim for schedule award finding that he had failed to provide any medical evidence from an attending physician addressing permanent impairment.

Appellant disagreed with the decision and requested a review of the written record on February 4, 2011. He submitted an April 23, 2009 nerve conduction study (NCS) and electromyography (EMG) reports issued by Dr. Rosalind Bowles, Board-certified in internal

---

<sup>2</sup> Appellant also submitted a traumatic injury claim form dated September 29, 1993, in which he claimed he injured his elbow while removing an oil pan plug from an engine. On September 2, 2010 OWCP also received from him a Form CA-7 for a schedule award, which was dated October 1, 1993, claiming a schedule award for impairment to his right elbow.

<sup>3</sup> In the same statement, appellant also requested OWCP to process his schedule award claim for his elbow impairments, which was under OWCP No. xxxxxx149.

medicine, who indicated that the testing was hampered by poor patient relaxation and found no definite evidence of radiculopathy. An NCS was interpreted as essentially a normal study.

In a May 16, 2011 decision, OWCP's hearing representative affirmed the January 25, 2011 decision.

### **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>4</sup> and its implementing federal regulations,<sup>5</sup> 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.<sup>6</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>7</sup>

Not all medical conditions accepted by OWCP result in permanent impairment to a scheduled member.<sup>8</sup> It is the claimant's burden to establish that he or she sustained permanent impairment to a scheduled member or function as a result of an employment injury.<sup>9</sup>

No schedule award is payable for a member, function or organ of the body not specified in FECA or in the regulations.<sup>10</sup> Neither FECA nor the implementing regulations authorize the payment of a schedule award for the permanent loss of use of the back or spine.<sup>11</sup> The Board has recognized that a claimant may be entitled to a schedule award for a permanent impairment to an extremity even though the cause of the impairment originates in the back or spine.<sup>12</sup>

### **ANALYSIS**

Appellant sought a schedule award pursuant to 5 U.S.C. § 8107 for his accepted employment injuries of the neck and lumbar sprains. The Board finds that there is no probative

---

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.* at § 10.404(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>8</sup> *Thomas P. Lavin*, 57 ECAB 353 (2006); *H.P.*, Docket No. 11-894 (issued November 9, 2011).

<sup>9</sup> *Tammy L. Meehan*, 53 ECAB 229 (2001); *H.P.*, *supra* note 8.

<sup>10</sup> *William Edwin Muir*, 27 ECAB 579 (1976); *C.E.*, Docket No. 11-637 (issued October 14, 2011).

<sup>11</sup> FECA specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

<sup>12</sup> *F.W.*, Docket No. 11-191 (issued October 17, 2011); *see also Thomas J. Englehart*, 50 ECAB 319 (1999).

medical evidence of record to establish any ratable permanent impairment to any of his upper or lower extremities resulting from the accepted employment injury.

FECA does not provide for schedule awards for impairment of the back or spine. Schedule awards can be paid for permanent impairment of an extremity, however, even if the impairment originates in the spine. Appellant has not submitted any medical evidence to substantiate that he sustained permanent impairment of any upper or lower extremity. On December 6, 2010 OWCP requested that he obtain a report from his treating physician, Dr. Keithan, and to rate impairment according to the sixth edition of the A.M.A., *Guides*. It did not receive any medical evidence in response. There is no medical evidence addressing appellant's permanent impairment pursuant to the sixth edition of the A.M.A., *Guides*.

OWCP received disability ratings from the VA and the Social Security Administration. The Board has long held that decisions by other governmental agencies regarding claims brought under federal statutes other than FECA not binding on OWCP.<sup>13</sup> The standards for determining entitlement to a schedule award under FECA and the A.M.A., *Guides* are different from the standards used for determination of disability for purposes of VA or social security disability benefits.

OWCP also received results of April 23, 2009 NCS and EMG studies; but Dr. Bowles did not address the relevant issue of appellant's permanent impairment pursuant to the A.M.A., *Guides*.

It is appellant's burden to establish entitlement to a schedule award. This necessitates medical evidence addressing permanent impairment and the date of maximum medical improvement did not meet his burden in this case.

Appellant may request a schedule award in the future based on medical evidence showing that he sustained permanent impairment to a scheduled member or function of the body.

### **CONCLUSION**

The Board finds that appellant is not entitled to a schedule award under 5 U.S.C. § 8107 as the medical evidence does not establish a ratable employment-related permanent impairment to a scheduled member or function of the body.

---

<sup>13</sup> *K.T.*, Docket No. 11-278 (issued October 6, 2011); *see also Raj B. Thackurdeen*, 54 ECAB 396 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 16 and January 25, 2011 are affirmed.

Issued: March 6, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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