

FACTUAL HISTORY

On July 24, 2009 appellant, then a 49-year-old painter, sustained ruptured discs and autonomic nerve dysfunction at C3-4 and C4-5 when a roof hatch fell on his head.² On August 2, 2010 Dr. R. Cem Cezayirli, Board-certified in neurosurgery, performed an arthrodesis and anterior cervical discectomy at C3-4.³ Appellant was placed on the periodic compensation rolls and returned to modified duty on October 5, 2010.

On January 14, 2011 appellant filed a schedule award claim. He submitted a functional capacity evaluation and a January 5, 2011 report, in which Dr. Walter G. Haynes, III, a Board-certified neurosurgeon, advised that appellant reached maximum medical improvement as of December 29, 2010. Dr. Haynes reported complaints of neck stiffness and moderate pain and discomfort with normal sensation in C3 through 5 dermatomal distribution with moderate weakness in cervical musculature and mild weakness in bilateral upper extremities. He found a Disability of Arm, Shoulder and Hand (*QuickDash*) score of eight, which confirmed a grade modifier of zero for functional history. Dr. Haynes advised that, in accordance with Proposed Table 1 (Spinal Nerve Impairment) of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),⁴ due to a C3 through C5 nerve root impairment, appellant had a class 1 sensory deficit with a default value of 1 and zero grade modifiers. He used the net adjustment formula and determined that appellant had no sensory impairment. Dr. Haynes also found that, under Proposed Table 1 of the sixth edition, appellant had a class 1 motor deficit, with a default value of 4. He again found no grade modifiers and applied the net adjustment formula, which yielded a two percent upper extremity motor impairment.

In a January 13, 2011 report, Dr. Cezayirli reviewed the functional capacity evaluation and advised that, in accordance with the A.M.A., *Guides*, appellant had a seven percent whole body impairment due to loss of neck motion and upper extremity weakness. He found that appellant could return to his previous employment without restriction. Appellant returned to full duty on January 18, 2011.

By report dated January 24, 2011, an OWCP medical adviser stated that maximum medical improvement was reached on January 12, 2011. He noted the physical findings reported by Dr. Haynes. According to the July and August 2009 *The Guides Newsletter*, rating spinal nerve extremity impairment under the sixth edition of the A.M.A., *Guides*, the uppermost root to be considered for motor loss in the upper extremity is C5. He reported that the involved root in this case was C4 and that, although appellant could have an impairment of the spine, he did not appear to have any upper extremity impairment. The medical adviser further noted that a

² The claim was initially denied in a September 11, 2009 decision. By decision dated November 2, 2009, an OWCP hearing representative remanded the case to OWCP for development of the medical evidence. Based on a February 1, 2010 report from Dr. Steven B. Fuller, an OWCP referral physician who is Board-certified in orthopedic surgery, on February 5, 2010 OWCP accepted the claim.

³ Appellant returned to limited duty for the period September 8 to October 14, 2009 and again from January 1 to August 1, 2010.

⁴ A.M.A., *Guides* (6th ed. 2008).

QuickDash score of eight corresponded to a grade modifier of zero and concluded that appellant had no impairment of either upper extremity.

By decision dated January 26, 2011, OWCP found that appellant was not entitled to a schedule award.

Appellant, through his attorney, timely requested a hearing and submitted medical evidence.⁵ In an April 22, 2011 report, Dr. M. Stephen Wilson, an orthopedic surgeon and occupational medicine specialist, noted the history of injury and appellant's medical treatment. He provided physical examination findings, including neck range of motion. Dr. Wilson reported weakness in bilateral shoulders, elbows and wrists, with decreased sensation to monofilament testing in the C4 dermatome of the bilateral upper extremities. He advised that appellant was at maximum medical improvement and that, based on Proposed Table 1, using an equivalent rating of the C4 nerve root, appellant had a class 1 sensory impairment of each arm, with a default value of one percent and a class 1 motor impairment of each upper extremity, with a default value of four percent. Dr. Wilson found a grade 3 modifier for functional history, based on complaints of pain and a *QuickDash* score of 64.1 and a grade 1 modifier for clinical studies. He applied the Combined Values Chart to conclude that appellant had a nine percent impairment of each upper extremity.

At the June 8, 2011 hearing, appellant testified that he had problems of tingling, numbness and occasional shooting pain in his upper extremities. In a July 20, 2011 decision, an OWCP hearing representative noted that Dr. Wilson did not address the issue raised by the medical adviser, that the A.M.A., *Guides* limit upper extremity impairment above the C5 level and affirmed the January 25, 2011 decision.

LEGAL PRECEDENT

The schedule award provision of FECA⁶ and its implementing federal regulations⁷ 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.⁸ For decisions after

⁵ This included duplicates of evidence previously of record and a September 21, 2010 report, in which Dr. Haynes advised that appellant should not be deployed with the military due to recent neck surgery.

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ *Id.* at § 10.404(a).

February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.⁹ For decisions issued after May 1, 2009, the sixth edition is to be used.¹⁰

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.¹¹ 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.¹²

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* has offered an alternative approach to rating spinal nerve impairments.¹³ A method for rating spinal nerve extremity impairment under the sixth edition was offered. This included a Proposed Table 1 that provided upper extremity impairment analysis for nerve roots C5 through T1. Proposed Table 2 provided lower extremity analysis for nerve roots L3 through S1.¹⁴ 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.¹⁵

ANALYSIS

The accepted conditions in this case are ruptured discs and autonomic nerve dysfunction at C3-4 and C4-5. The Board finds that appellant did not establish that he sustained permanent impairment to the upper extremities based on the accepted conditions. In a January 5, 2011 report, Dr. Haynes did not identify which upper extremity he was discussing or indicate that his findings applied bilaterally. Dr. Cezayirli indicated that appellant had a seven percent whole body impairment due to loss of neck motion and upper extremity weakness. FECA does not authorize schedule awards for permanent impairment of the spine or whole person.¹⁶ Neither of these reports are probative on the issue of permanent impairment under OWCP guidelines.

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

¹⁰ FECA Bulletin No. 09-03 (issued March 15, 2009).

¹¹ *Pamela J. Darling*, 49 ECAB 286 (1998).

¹² *Thomas J. Engelhart*, 50 ECAB 319 (1999).

¹³ *Rozella L. Skinner*, 37 ECAB 398 (1986).

¹⁴ Christopher R. Brigham, MD, *Rating Spinal Nerve Extremity Impairment Using the Sixth Edition, The Guides Newsletter* (July/August 2009).

¹⁵ FECA Transmittal No. 10-04 (issued January 9, 2010); Federal (FECA) Procedure Manual, *supra* note 9, Exhibit 4.

¹⁶ *N.D.*, 59 ECAB 344 (2008).

While Dr. Wilson provided that appellant had nine percent bilateral upper extremity impairment due to a rating of the C4 nerve root, he stated that he was using an “equivalent” rating for the C4 nerve root. As noted by the medical adviser, the uppermost root to be considered for rating a upper extremity impairment is C5. Proposed Table 1, which has been incorporated into OWCP procedures at section 3.700, provides that the range of spinal nerve upper extremity impairments begins at C5.¹⁷ Thus, Dr. Wilson’s report did not conform to the A.M.A., *Guides*.¹⁸

Appellant submitted no medical evidence in conformance with the A.M.A., *Guides*, supporting ratable impairment of a scheduled body member, causally related to the accepted conditions. He did not meet his burden of proof and OWCP properly denied his claim for a schedule award.

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 was entitled to a schedule award for the accepted cervical conditions.

¹⁷ *Supra* notes 14 and 15.

¹⁸ The Board further notes that Dr. Wilson did not explain how he determined the *QuickDash* score of 64.1 or indicate on what he based the modifier for clinical studies.

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 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