



## **FACTUAL HISTORY**

On January 19, 2010 appellant, then a 48-year-old gardener, experienced pain in his left buttock, left leg and right groin while lifting bags of mulch on tree mounds. He filed a claim for benefits, which OWCP accepted for thoracic or lumbosacral neuritis or radiculitis and right groin sprain.

In a Form CA-7 dated January 3, 2011, appellant requested a schedule award based on partial loss of use of his left and right lower extremities.

In a report dated April 1, 2011, Dr. James Graeter, a specialist in orthopedic surgery, stated that appellant underwent a magnetic resonance imaging (MRI) scan. It showed bulging discs on the left side at L4-5 and L5-S1 which corresponded with his left leg symptoms. Dr. Graeter advised that appellant was neurologically intact at the L4, L5 and S1 nerve roots. He opined that he had a 15 percent whole person impairment based on lumbar radiculopathy. Dr. Graeter noted, however, that, because FECA does not provide impairment awards for the spine but to a spinal nerve, appellant did not qualify for an award under FECA because he did not have any neurodeficit.

In a July 25, 2011 report, OWCP's medical adviser, Dr. Craig M. Uejo, Board-certified in occupational medicine, reviewed Dr. Graeter's report. He found that appellant had no ratable impairment to either of his lower extremities.

By decision dated August 2, 2011, OWCP found that appellant had no ratable impairment causally related to an accepted condition and therefore was not entitled to a schedule award.

On October 12, 2011 appellant, through his attorney, requested reconsideration.

In an August 29, 2011 report, Dr. Rafael A. Lopez Steuart, Board-certified in orthopedic surgery, found that appellant had a 10 percent left lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). Appellant had complaints of pain in the back of his left leg extending down to the ankle with activity; that was related to his January 2010 employment injury. On examination, Dr. Steuart found sensation and motor strength was grossly intact, with no root tension signs.

Dr. Steuart stated that he relied on section 13.9a and Table 13-17, at pages 339-40 of the A.M.A., *Guides*<sup>2</sup> to rate a two percent, class 1 impairment, based on mild dysesthetic pain, for neuritis. With regards to the sacroiliac injury, he utilized section 17.4 and Table 17-11, at pages 592-93<sup>3</sup> of the A.M.A., *Guides* to rate a two percent, class 1 impairment. Under the Combined

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<sup>2</sup> A.M.A., *Guides* 339-40.

<sup>3</sup> *Id.* at 592-93.

Values Chart, this equaled a four percent whole person impairment. Relying on Table 16-10, page 531 of the A.M.A., *Guides*,<sup>4</sup> Dr. Steuart found 10 percent left leg impairment.

In a report dated November 1, 2011, Dr. Christopher R. Brigham, Board-certified in occupational medicine and an OWCP medical adviser, reviewed Dr. Steuart's August 29, 2011 report. He found that appellant did not have any ratable impairment of the lower extremities pursuant to the sixth edition of the A.M.A., *Guides*. Dr. Brigham stated that Dr. Steuart's findings did not support his impairment rating, noting as follows:

“Dr. Steuart's rating is not compliant with the A.M.A., *Guides*. First, his rating using Table 13.17 under [s]ection 13.9a is not supportable. This table is used for dysesthetic pain secondary to a peripheral neuropathy or spinal cord injury. There has been no spinal cord injury and there is no electrodiagnostic evidence of a peripheral neuropathy. Secondly, the use of Table 17-11 is to rate pelvic fractures. There has been no pelvic fracture. Neither table used by Dr. Steuart is appropriate.”

Dr. Brigham explained that spinal nerve impairment (such as radiculopathy affecting the extremities) was to be rated pursuant to the July/August 2009 issue of (*The AMA Guides Newsletter*) (hereinafter, *The Guides Newsletter*). He noted that Dr. Steuart documented on physical examination that sensation and motor strength was grossly intact. Therefore, there was no ratable spinal nerve motor or motor deficits in the lower extremity.

By decision dated March 28, 2012, OWCP denied appellant's request for a schedule award, finding that he had no ratable impairment. It found that Dr. Brigham's November 1, 2011 report represented the weight of the medical evidence.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>5</sup> and its implementing regulations<sup>6</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 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>7</sup> The claimant has the burden of proving

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<sup>4</sup> *Id.* at 531.

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>7</sup> *Id.*

that the condition for which a schedule award is sought is causally related to his or her employment.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP procedures indicate that *The Guides Newsletter* "Rating Spinal Nerve Extremity Impairment using the sixth edition" (July/August 2009) is to be applied.<sup>11</sup>

In addressing lower extremity impairments, due to peripheral or spinal nerve root involvement, the sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH) and if electrodiagnostic testing were done, Clinical Studies (GMCS).<sup>12</sup> The net adjustment formula is (GMFH - CDX) + (GMCS - CDX).<sup>13</sup>

### ANALYSIS

OWCP accepted that appellant sustained the conditions of thoracic/lumbosacral neuritis or radiculitis. The medical reports of record, however, do not establish permanent impairment to the lower extremities due to the accepted conditions. Dr. Graeter stated in April 1, 2010 report that appellant was neurologically intact at the L4, L5 and S1 nerve roots. He noted a 15 percent whole person impairment based on lumbar radiculopathy. An OWCP medical adviser reviewed Dr. Graeter's report on July 25, 2010 and noted that a schedule award was not payable under

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<sup>8</sup> *Veronica Williams*, 56 ECAB 367, 370 (2005).

<sup>9</sup> *Pamela J. Darling*, 49 ECAB 286 (1998).

<sup>10</sup> *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>11</sup> 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, Exhibit 1, note 5 (January 2010). The Newsletter is included as Exhibit 4.

<sup>12</sup> A.M.A., *Guides* 533.

<sup>13</sup> *Id.* at 521.

FECA for injury to the spine<sup>14</sup> or based on whole person impairment.<sup>15</sup> Dr. Graeter's report failed to properly rate impairment to a scheduled member as listed in section 8107.

Appellant requested reconsideration and submitted the August 29, 2011 report of Dr. Steuart, a treating physician, who noted a 10 percent left leg impairment. Dr. Brigham, OWCP's medical adviser, reviewed this report and found that the impairment rating did not conform to the A.M.A., *Guides*. He noted that the two percent impairment rating for neuritis based on mild dysesthetic pain was not applicable because Table 13-17 was intended to rate dysesthetic pain secondary to a peripheral neuropathy or spinal cord injury. As appellant did not sustain a spinal cord injury and there was no electrodiagnostic evidence of a peripheral neuropathy, Dr. Brigham found no ratable impairment under this section. In addition, Dr. Brigham found that Dr. Steuart's use of Table 17-11 was not appropriate because appellant did not sustain a pelvis fracture.

Dr. Brigham determined that Dr. Steuart failed to utilize the tables in *The Guides Newsletter*, July/August 2009, and page 430, in addition to the adjustment grid at section 15.3, in conjunction with Table 15-7, Table 15-8 and Table 15-9 at page 406-11 of the A.M.A., *Guides*. He explained that the examiner was required to use neurologic examination findings, apply them to the net adjustment at Table 15-7, Table 15-8 and Table 15-9 and then define the impairment values in Table 15-20 at page 434 of the A.M.A., *Guides*. Dr. Brigham stated that this same process could be used with the new proposed tables in *The Guides Newsletter*, July/August 2009, in which the ratings for the sensory and motor components are calculated through this process, adjusted for GMFH and GMCS, then combined. Dr. Steuart noted on physical examination that sensation and motor strength was grossly intact. Based on these findings, Dr. Brigham concluded that appellant had no ratable spinal nerve motor or motor deficits in the lower extremity and that he had a zero percent lower extremity impairment.

For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP procedures indicate that *The Guides Newsletter* "Rating Spinal Nerve Extremity Impairment using the sixth edition" (July/August 2009) is to be applied.<sup>16</sup> The Board finds that Dr. Brigham, properly applied the A.M.A., *Guides* to rate appellant's left lower extremity impairment. Dr. Brigham's report constitutes the weight of medical opinion. Dr. Steuart's August 29, 2011 report did not provide sufficient findings required to meet the standards for rating a lower extremity impairment for appellant's condition set forth in the sixth edition of the A.M.A., *Guides* and the July/August 2009 edition of *The Guides Newsletter*. His report does not provide adequate medical rationale in support of his opinion that appellant is entitled to a 10 percent schedule award for the left lower extremity.<sup>17</sup> OWCP properly determined that

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<sup>14</sup> *Supra* note 9.

<sup>15</sup> *N.M.*, 58 ECAB 273 (2007).

<sup>16</sup> *Supra* note 11.

<sup>17</sup> *William C. Thomas*, 45 ECAB 591 (1994).

Dr. Steuart's report did not provide a basis for a schedule award under FECA.<sup>18</sup> The Board will affirm the March 28, 2012 decision.

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 sustained any permanent impairment to a scheduled member of his body causally related to his accepted thoracic/lumbosacral neuritis or radiculitis conditions, thereby entitling him to a schedule award under 5 U.S.C. § 8107.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 28, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2012  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>18</sup> The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. *See Peter C. Belkind*, 56 ECAB 580, 585 (2005).