

employment. Appellant also had a June 7, 2000 motor vehicle accident in the performance of duty, which was accepted for thoracic and neck sprains, aggravation of lumbar sprain and contusions of the right knee and left thigh. He retired from federal employment on March 8, 2002.

On November 16, 2010 appellant submitted a claim for compensation (Form CA-7) for a schedule award. He submitted a report dated June 15, 2010 from Dr. Neil Novin, an internist, who provided a history of injury and results on examination. Dr. Novin found that appellant had a 29 percent impairment to his left leg. He cited generally to Table 17-2, Table 17-7 and Table 17-8 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition, hereinafter A.M.A., *Guides*), without explaining how the tables were applied.

In a report dated December 19, 2010, Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and OWCP's medical adviser, reviewed the medical evidence. He found that appellant had a four percent permanent to each leg based on an S1 spinal nerve impairment under the A.M.A., *Guides* July to August 2009 Newsletter (Rating Spinal Nerve Impairments Using the sixth edition). The date of maximum medical improvement was reported as June 15, 2010.

By decision dated February 9, 2011, OWCP issued schedule awards for four percent permanent impairment to each leg. The period of the award was 23.04 weeks commencing June 15, 2010.

On July 1, 2011 appellant, through his representative, requested reconsideration. In a June 22, 2011 report, Dr. Robert Macht, a surgeon, provided a history that appellant slipped and fell while delivering mail and was involved in a motor vehicle accident in June 2000. He provided results on examination and diagnosed traumatic injury to back with bilateral multiple level radiculopathy. With respect to permanent impairment, Dr. Macht identified Table 17-4 of the A.M.A., *Guides*. He first stated that appellant had a class 1 impairment or a seven percent whole person impairment and then stated that appellant had a class 4 impairment because of the bilateral radiculopathy, resulting in a 29 percent whole person impairment. Dr. Macht stated that the difference was 22 percent, and using the Combined Values Chart, this would be a 12 percent "impairment of the whole person due to the left leg and 11 percent impairment to the whole person due to the right leg." He concluded that the value of the leg was 40 percent of the whole person, for a 29 percent left leg impairment and 27 percent right leg impairment.

Appellant also submitted continuing treatment reports from attending physician Dr. Leroy Pelicci, Board-certified in neurology, from March 1 to September 12, 2011. Dr. Pelicci did not provide any opinion as to permanent impairment.

By decision dated September 15, 2011, OWCP found the evidence submitted was insufficient to warrant modification of the February 9, 2011 schedule award decision.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ 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.⁴ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁶

A claimant seeking compensation under FECA has the burden to establish the essential elements of his claim.⁷ With respect to a schedule award, it is appellant's burden of proof to establish an increased schedule award.⁸ A claimant may seek an increased schedule award if the evidence establishes that he sustained an increased impairment causally related to an employment injury.⁹

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 to August 2009) is to be applied.¹⁰

ANALYSIS

OWCP granted a schedule award on February 9, 2011, finding appellant had a four percent permanent impairment to each leg. The schedule award was based on the opinion of Dr. Berman, an OWCP medical adviser, who applied *The Guides Newsletter* to the medical evidence. As noted, *The Guides Newsletter* is the appropriate method of evaluating peripheral nerve impairments to the lower extremities. Dr. Berman's opinion was the only medical opinion properly applying *The Guides Newsletter*.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ See *Ronald R. Kraynak*, 53 ECAB 130 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

⁵ *Supra* note 3.

⁶ FECA Bulletin No. 09-03 (March 15, 2009).

⁷ *John W. Montoya*, 54 ECAB 306 (2003).

⁸ *Edward W. Spohr*, 54 ECAB 806, 810 (2003).

⁹ See *Rose V. Ford*, 55 ECAB 449 (2004).

¹⁰ 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 Newsletter is included as Exhibit 4.

On July 1, 2011 appellant stated that he was requesting reconsideration contending that he had greater impairment of his legs. He submitted the June 22, 2011 report from Dr. Macht. The Board notes that a medical report must be based on a complete and accurate background to be of probative value.¹¹ Dr. Macht referred generally to a slip and fall at work in the history provided. As noted by OWCP, there was no evidence presented as to a claim for a slip and fall. The accepted claim in this case was for a lumbar sprain and lumbar degeneration causally related to appellant's work duties, as well as a separate claim for lumbar injuries in a June 2000 motor vehicle accident. Dr. Macht did not provide a complete and accurate background for his opinion.

In addition, Dr. Macht did not provide a probative medical opinion with respect to a permanent impairment as rated under the A.M.A., *Guides* under FECA. He referred to Table 17-3, which is a table for thoracic spinal impairments rated in terms of whole person impairments.¹² Neither FECA nor its regulations provide for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of "organ" under FECA.¹³ Use of the spinal regional grids is not appropriate to determine an impairment under FECA.¹⁴

As noted, peripheral nerve impairments to the legs are to be based on spinal injuries rated in conformance to *The Guides Newsletter*. Dr. Macht did not refer to *The Guides Newsletter* or identify any appropriate table in rating lower extremity impairment under the A.M.A., *Guides*. It is appellant's burden of proof to establish an increased schedule award, and he did not meet his burden of proof in this case. Neither Dr. Macht nor Dr. Pelicci provided a medical opinion sufficient to establish an increased permanent impairment.

On appeal, appellant indicated that he had been treated by Dr. Pelicci for 12 years and was concerned that his medical condition could progressively worsen. The issue on appeal is limited to whether he is entitled to a schedule award for additional permanent impairment. The medical evidence of record does not establish more than a four percent permanent impairment to each leg.

The Board notes that appellant may at anytime request an increased schedule award based on medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.¹⁵

CONCLUSION

The Board finds that appellant has not established more than a four percent permanent impairment to each leg.

¹¹ See, e.g., *K.C.*, Docket No. 11-2026 (issued June 7, 2012).

¹² A.M.A., *Guides* 567, Table 17-3.

¹³ See *James E. Jenkins*, 39 ECAB 860 (1988); 5 U.S.C. § 8101(20).

¹⁴ See *W.C.*, Docket No. 11-1659 (issued March 22, 2012).

¹⁵ See *Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 15, 2011 is affirmed.

Issued: September 5, 2012
Washington, DC

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

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

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