



## **FACTUAL HISTORY**

On January 30, 2008 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim alleging that, while she was delivering mail, her motor vehicle was struck by a passing 18-wheeler. She alleged injury to her chest and right shoulder bruising. OWCP accepted appellant's claim for sprain of the neck, right shoulder and upper arm and other specified sites, a single episode of depression, post-traumatic stress disorder, adhesive capsulitis of the right shoulder, aggravation of cervical spondylosis with myelopathy, other syndromes affecting the cervical region, brachial neuritis or radiculitis not otherwise specified, and unspecified mechanical complication of internal orthopedic device, implant and graft. It paid wage-loss compensation and medical benefits.

On January 21, 2010 appellant underwent a C5-6, C6-7 anterior cervical discectomy, fusion with allograft and plating. On February 10, 2010 she underwent an anterior cervical fusion with Medtronic stackable cage, also with autograft and allograft bone. On February 12, 2010 appellant underwent a C5 to C7 posterior cervical fixation with vertex infusion with somatosensory motor-evoked potential monitoring.

On July 28, 2010 OWCP referred appellant for a second opinion. In an August 13, 2010 report, Dr. James Bethea, a Board-certified orthopedic surgeon, noted that she had neck pain status post three surgical procedures and adhesive capsulitis of the right shoulder. He found that appellant had no neurological deficit in the upper extremities or abnormalities in the lower extremities on neurological examination. Appellant's right shoulder adhesive capsulitis had not resolved and she had some restriction of right shoulder movement. Dr. Bethea also noted that the cervical spondylosis with myelopathy had not resolved. He stated that appellant's neck sprain and shoulder sprain were not active problems and that there was no evidence of brachial neuritis or radiculitis. Dr. Bethea noted no other residuals from her 2008 employment injury. He stated that continued pain was to be expected but that no further treatment was needed for appellant's cervical spine, but she needed further treatment for her right shoulder.

In a June 5, 2011 note, Dr. Gregory Oetting, a treating Board-certified neurosurgeon, stated that appellant reached maximum medical improvement on August 20, 2010. He noted that she described significant neck pain and spasms that were chronic in nature, as well as decreased range of motion and significant numbness and tingling and lack of coordination in the right hand with decreased grip strength. Dr. Oetting stated that this was not unexpected with significant radiculopathies she was having prior to surgery. He did not believe that appellant could engage in her previous employment.

In a November 1, 2011 report, a physician's assistant advised that appellant had reached maximum medical improvement in February 2011 and her radicular issues had resolved. He indicated that she was not going to be able to work at her previous place of employment. A duty status report diagnosed cervical spondylosis and cervical radiculopathy. The signature on this form is not very legible, but appears to be that of the physician's assistant.

On February 6, 2012 appellant filed a claim for a schedule award. She did not submit any supporting documentation for the schedule award.

On April 13, 2012 OWCP referred the case record to Dr. H.P. Hogshead, a medical adviser, for a determination as to any permanent impairment. On April 16, 2012 Dr. Hogshead listed the date of maximum medical improvement as February 2011. He noted that appellant had three surgical procedures on the cervical spine with good results. Dr. Hogshead noted that Dr. Bethea did not find evidence of a cervical nerve root deficit and the attending physician's examination of November 1, 2011 was in agreement that there were no radicular issues. He noted that OWCP recognized only extremity impairment resulting from spinal nerve root deficit. In the absence of demonstrated radiculopathy, there was no impairment to the upper extremities. Appellant had no impairment of the right or left arm.

On May 8, 2012 OWCP denied appellant's claim for a schedule award.

On June 5, 2012 appellant requested review of the written record by OWCP's hearing representative.

By decision dated October 17, 2012, OWCP's hearing representative affirmed the May 8, 2012 decision denying a schedule award.

### **LEGAL PRECEDENT**

FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>2</sup> Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>3</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*.<sup>4</sup>

No schedule award is payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.<sup>5</sup> As neither FECA nor its regulations provide for the payment of a schedule award for the permanent loss of use of the body or back as a whole, no claimant is entitled to such a schedule award.<sup>6</sup> The Board notes that section 8101(19) specifically excludes the back from the definition of organ.<sup>7</sup> However, a claimant may be entitled to a schedule award for permanent impairment to an upper or lower extremity even

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<sup>2</sup> 5 U.S.C. § 8107. The section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>3</sup> A. *George Lampo*, 45 ECAB 441 (1994).

<sup>4</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>5</sup> *D.N.*, Docket No. 11-906 (issued January 23, 2012); *Thomas J. Englehart*, 50 ECAB 319 (1999).

<sup>6</sup> *See D.N.*, 59 ECAB 576 (2008); *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

<sup>7</sup> 5 U.S.C. § 8101(19).

though the cause of impairment originated in the neck, shoulders or spine.<sup>8</sup> A schedule award is not payable for an impairment of the whole body.<sup>9</sup>

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from his physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decrease in strength or disturbance of sensation or other pertinent descriptions of the impairment. This description 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.<sup>10</sup>

### ANALYSIS

OWCP accepted appellant's claim sprains of the neck, right shoulder and upper arm and other specified sites, adhesive capsulitis of the right shoulder, an aggravation cervical spondylosis with myelopathy, and other syndromes affecting cervical region, brachial neuritis or radiculitis not otherwise specified, and unspecified mechanical complications of the internal orthopedic device, implant and graft. Appellant underwent three surgeries on her cervical spine. She claimed a schedule award, which was denied in decisions dated May 8 and October 17, 2012.

The Board finds that appellant has not submitted sufficient medical evidence to establish that she sustained permanent impairment of a scheduled body member causally related to the accepted cervical conditions. FECA does not authorize schedule awards for permanent impairment of the spine or whole person.<sup>11</sup> Dr. Bethea noted some restriction in appellant's right shoulder movement, but did not address whether this resulted in any permanent impairment. He noted that he did not find evidence of cervical radiculopathy. Dr. Oetting noted decreased range of motion and significant numbness and tingling and lack of coordination in the right hand with decreased grip strength. He stated that this was not unexpected with the significant radiculopathies appellant was having prior to surgery. Dr. Oetting did not provide support for permanent impairment to either upper extremity or address any radicular symptoms following surgery. OWCP's medical adviser found that there were no radicular issues. In the absence of radiculopathy, there was no upper extremity impairment resulting from cervical nerve root deficit. Appellant has the burden to submit medical evidence establishing permanent impairment of a scheduled member. OWCP properly denied her claim for a schedule award.

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<sup>8</sup> *J.Q.*, 59 ECAB 366 (2008); *Thomas J. Engelhart*, *supra* note 5.

<sup>9</sup> *N.M.*, 58 ECAB 273 (2007); *Marilyn S. Freeland*, 57 ECAB 607 (2006).

<sup>10</sup> *D.M.*, Docket No. 11-775 (issued October 11, 2011); *Peter C. Belkind*, 56 ECAB 580 (2005); *Vanessa Young*, 55 ECAB 575 (2004).

<sup>11</sup> *A.S.*, Docket No. 11-2097 (issued May 10, 2012).

Appellant may request a schedule award or an 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 established entitlement to a schedule award due to her work-related injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 17, 2012 is affirmed.

Issued: August 23, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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