

FACTUAL HISTORY

On September 15, 2005 appellant, then a 57-year-old dock clerk, filed an occupational disease claim (Form CA-2) alleging a cervical condition due to factors of his federal employment. OWCP accepted the claim for aggravation of preexisting spinal stenosis in the cervical region.

In a May 18, 2009 report, Dr. Dennis J. Bonner, Board-certified in physical medicine and rehabilitation, diagnosed cervical radiculopathy and herniated cervical disc. He opined that, under page 392 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*), appellant had an 18 percent impairment of the whole person.

Appellant submitted electromyography (EMG) and nerve conduction velocity (NCV) studies dated April 7, 2006 which revealed changes consistent with chronic C5-6 radiculopathy. An October 24, 2008 x-ray report showed multilevel degenerative disc disease within the cervical spine and spinal canal stenosis.

On June 7, 2009 appellant filed a claim for a schedule award.

In a May 26, 2009 report, Dr. Bonner reiterated his 18 percent whole person impairment rating for the cervical spine/radiculopathy diagnoses based on the fifth edition of the A.M.A., *Guides*.

By letter dated July 28, 2009, OWCP requested an impairment rating from Dr. Bonner based on the sixth edition of the A.M.A., *Guides*. In an August 4, 2009 report, Dr. Bonner assigned appellant to class 3 under Table 17-2 of the sixth edition of the A.M.A., *Guides* and opined that his scores modified the class to a 19 percent whole person impairment. Appellant also submitted progress reports from Dr. Bonner for the period May 26, 2009 through October 14, 2011.

By letter dated September 11, 2009, OWCP notified Dr. Bonner that it did not approve of schedule awards for whole body impairments and requested a rating of impairment to the left or right upper extremities within 30 days.

In a December 16, 2009 report, Dr. Bonner opined that appellant had an 18 percent whole person impairment rating for his cervical spine/radiculopathy diagnoses based on the sixth edition of the A.M.A., *Guides*. He noted that appellant had pain and spasms in the cervical spine, his reflexes were mildly decreased in the right biceps and there was mild decreased sensitivity in the right arm. Appellant also had persistent neck pain that went up into his right arm, which was made worse by bending, lifting and carrying.

OWCP referred appellant to Dr. Jeffrey C. Pollock, a Board-certified neurologist, for a second opinion evaluation. In a July 13, 2010 report, Dr. Pollock reviewed a statement of accepted facts and appellant's medical record and conducted a physical examination. He found that appellant had multiple subjective complaints clinically without any objective findings on neurological examination. Dr. Pollock opined that appellant's weakness of multiple muscles of the upper extremities and patchy sensory dysfunction of the right upper extremity did not fit the pattern of a cervical radiculopathy. Further, appellant's restricted neck movement appeared to be

exaggerated in appearance. Dr. Pollock concluded that appellant had reached maximum medical improvement as of July 6, 2010 and had no neurological impairment under the A.M.A., *Guides*.

On January 24, 2011 an OWCP medical adviser reviewed Dr. Pollock's July 13, 2010 report and agreed that appellant had no ratable impairment to the right upper extremity based on the sixth edition of the A.M.A., *Guides*.

By decision dated February 6, 2012, OWCP denied appellant's schedule award claim finding that the medical evidence did not establish a ratable impairment of a scheduled member. It relied upon OWCP's medical adviser's January 24, 2011 report in reaching this determination.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ 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.⁵ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁶ It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.⁷ A schedule award is not payable under section 8107 of FECA for an impairment of the whole person.⁸

A schedule award is not payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.⁹ As neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine, no claimant is entitled to such an award.¹⁰ However, as FECA makes provision for the extremities, a claimant may be entitled to a schedule award for permanent impairment to an

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.*

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

⁷ See *Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(3) (September 1995). This portion of OWCP procedures provide that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

⁸ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

⁹ See *Tania R. Keka*, 55 ECAB 354 (2004).

¹⁰ See *id.* FECA itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

extremity even though the cause of the impairment originates in the spine, if the medical evidence establishes impairment as a result of the employment injury.¹¹

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS

The Board finds that the medical evidence of record fails to establish that appellant sustained any permanent impairment to an arm based on his accepted cervical condition. OWCP accepted his claim for aggravation of preexisting spinal stenosis in cervical region. Although appellant may not receive a schedule award for permanent impairment to his back or spine,¹³ he may be entitled to a schedule award for any permanent impairment to his upper extremities, provided the medical evidence establishes such impairment.¹⁴ The medical evidence of record does not establish that he sustained permanent impairment to his upper extremities due to the accepted cervical condition.

The Board finds that OWCP properly relied on a January 24, 2011 report from an OWCP medical adviser who concluded that appellant had no ratable impairment of a scheduled member under the sixth edition of the A.M.A., *Guides*. OWCP's medical adviser properly reviewed the medical record and found no basis for rating impairment to a scheduled member of the body.¹⁵ He reviewed a July 13, 2010 examination by Dr. Pollock, a Board-certified neurologist, to whom OWCP referred appellant for a second opinion, who found that appellant had multiple subjective complaints without any objective findings on neurological examination. Dr. Pollock concluded that appellant had no neurological impairment of the upper extremities under the A.M.A., *Guides*. Based on the clinical findings of Dr. Pollock, OWCP's medical adviser properly concluded that there was no medical evidence of impairment to the right upper extremity resulting from the accepted condition and, therefore, there was no ratable impairment of a scheduled member under the sixth edition of the A.M.A., *Guides*.

¹¹ See *George E. Williams*, 44 ECAB 530 (1993). In 1966, amendments to FECA modified the schedule award provision 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.

¹² See *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

¹³ 5 U.S.C. § 8101(19); *Patricia J. Horney*, 56 ECAB 256 (2005).

¹⁴ See *George E. Williams*, *supra* note 11.

¹⁵ The Board notes that it is appropriate for an OWCP medical adviser to review the clinical findings of the treating physician to determine the permanent impairment. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.5(c) (September 1995); *Richard R. LeMay*, 56 ECAB 341 (2006).

Although Dr. Bonner provided an impairment rating based on the sixth edition of the A.M.A., *Guides*, his reports were based on whole person spinal impairment. As noted, FECA does not authorize schedule awards for loss of use of the spine or the body as a whole.¹⁶

Appellant did not submit sufficient medical evidence to establish that he sustained a permanent impairment to a specified member, organ or function of the body listed in FECA or its implementing regulations. The medical evidence of record supports that he has no upper extremity impairment. The Board finds that appellant is not entitled to a schedule award as a result of his accepted employment-related cervical injury.

On appeal, appellant contends that the evidence he submitted is sufficient to establish his claim. For the reasons stated above, the Board finds his argument is not substantiated.

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 met his burden of proof to establish that he is entitled to a schedule award for an employment-related upper extremity impairment.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2013
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

¹⁶ *D.A.*, Docket No. 10-2172 (issued August 3, 2011); *J.Q.*, 59 ECAB 366 (2008).