

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Prarieville, LA, Employer**

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**Docket No. 12-1798  
Issued: February 20, 2013**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 29, 2012 appellant, through her attorney, timely appealed the May 23, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied a schedule award. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award claim.<sup>2</sup>

**ISSUE**

The issue is whether appellant has a ratable impairment of the lower extremities attributable to his employment-related lumbar condition.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The record includes evidence received after OWCP issued its May 23, 2012 final decision. As this evidence was not part of the record when OWCP issued its May 23, 2012 decision, the Board is precluded from considering it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

This case was previously before the Board.<sup>3</sup> Appellant, a 57-year-old former rural carrier, injured her lower back in a July 6, 2006 employment-related motor vehicle accident.<sup>4</sup> OWCP accepted her traumatic injury claim for lumbar radiculitis and lumbar intervertebral disc displacement without myelopathy. On July 16, 2008 appellant filed a claim for a schedule award. When the case was last on appeal, OWCP had denied her schedule award claim based on the January 28, 2010 report of Dr. Donald M. Mauldin, a Board-certified orthopedic surgeon and impartial medical examiner (IME),<sup>5</sup> who found that appellant reached maximum medical improvement but had no impairment of the lower extremities causally related to her July 6, 2006 employment injury.

By order dated March 22, 2011, the Board set aside OWCP's February 17, 2010 decision and remanded the case for the district medical adviser to review Dr. Mauldin's January 28, 2010 findings.<sup>6</sup>

On remand, Dr. Michael M. Katz, a district medical adviser, reviewed the case record. In a report dated April 5, 2011, he found zero percent impairment of both lower extremities. Dr. Katz noted that Dr. Mauldin found no ratable impairment of either lower extremity on the basis of spinal nerve impairment.

By decision dated April 19, 2011, OWCP denied appellant's claim for a schedule award.

On February 20, 2012 appellant's counsel requested reconsideration. He claimed not to have received the April 19, 2011 decision. In the interim, OWCP received various treatment records regarding appellant's ongoing cervical and lumbar complaints.<sup>7</sup> No additional impairment rating was submitted with the latest request for reconsideration.

By decision dated May 23, 2012, OWCP reviewed the schedule award on the merits and denied modification of the April 19, 2011 determination.

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<sup>3</sup> Docket No. 10-1104 (issued March 22, 2011).

<sup>4</sup> Appellant resigned from her rural carrier position effective September 10, 2007.

<sup>5</sup> OWCP declared a conflict in medical opinion between appellant's physician, Dr. John W. Ellis, a Board-certified family practitioner, and Dr. Christopher E. Cenac Sr., a Board-certified orthopedic surgeon and OWCP referral physician, who examined appellant on November 20, 2008 and found no lower extremity impairment. In an August 6, 2009 report, Dr. Ellis found 17 percent impairment of the left lower extremity due to peripheral nerve impairments involving the L3, L5 and S1 nerve roots.

<sup>6</sup> The Board's March 22, 2011 order remanding case is incorporated herein by reference.

<sup>7</sup> The treatment records covered the period of May 2, 2011 through March 30, 2012. OWCP also received lumbar and cervical magnetic resonance imaging (MRI) scans dated November 14, 2011. Appellant also underwent lumbar medial branch blocks on January 17, 2012 and fluoroscopic-guided radiofrequency denervation on March 30, 2012.

## LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>8</sup> FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the appropriate standard for evaluating schedule losses.<sup>9</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).<sup>10</sup>

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or the implementing regulations.<sup>11</sup> Neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.<sup>12</sup> However, a schedule award is permissible where the employment-related back condition affects the upper and/or lower extremities.<sup>13</sup>

The sixth edition of the A.M.A., *Guides* (2008) provides a specific methodology for rating spinal nerve extremity impairment.<sup>14</sup> It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine.<sup>15</sup> FECA-approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities.<sup>16</sup>

FECA provides that, if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.<sup>17</sup> For a conflict to arise the opposing physicians' viewpoints must be of "virtually

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<sup>8</sup> For a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

<sup>9</sup> 20 C.F.R. § 10.404.

<sup>10</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

<sup>11</sup> *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

<sup>12</sup> 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a); see *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *supra* note 10 at Chapter 2.808.6a(3).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *supra* note 10 at Chapter 3.700, Exhibit 4.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> 5 U.S.C. § 8123(a); see 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

equal weight and rationale.”<sup>18</sup> Where OWCP has referred the case to an IME to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>19</sup>

### ANALYSIS

OWCP declared a conflict in medical opinion based on the reports of Dr. Ellis and Dr. Cenac. Dr. Ellis found 17 percent left lower extremity impairment under the A.M.A., *Guides* (6<sup>th</sup> ed. 2008). Dr. Cenac found no lower extremity impairment. In light of this conflict, OWCP properly referred the claim to Dr. Mauldin, selected as the IME.

Dr. Mauldin examined appellant on January 28, 2010 and found that her complaints were primarily subjective in nature. He also noted that her restricted range of motion was voluntary. There were no objective findings on clinical examination. Appellant’s lower extremity strength was intact with no evidence of atrophy. Dr. Mauldin also noted no joint ankylosis and no gross motor or sensory deficits. He stated that appellant’s MRI scan did not reveal significant nerve root compression. Dr. Mauldin explained that rating any type of radicular component was inappropriate because there was no clear-cut documentation that she had significant radiculopathy related to her employment injury. With no documentation of radiculopathy and no documentation of motor or sensory deficits specific to the lower extremities, appellant did not have any impairment associated with her July 6, 2006 injury.

Following the prior appeal to the Board on remand Dr. Katz reviewed Dr. Mauldin’s January 28, 2010 report. He found that appellant had no lower extremity impairment under the A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

When a case is referred to an IME to resolve a conflict, the resulting medical opinion, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>20</sup> The Board finds that Dr. Mauldin’s January 28, 2010 opinion constitutes the special weight of medical evidence. Dr. Mauldin provided a well-reasoned report based on a proper factual and medical history. He accurately summarized the relevant medical evidence and relied on the statement of accepted facts. Dr. Mauldin also examined appellant and provided a thorough review of her relevant medical records. His report included detailed findings and medical rationale supporting his opinion. As the impartial specialist, Dr. Mauldin’s opinion was entitled to determinative weight.<sup>21</sup> Accordingly, the Board finds that OWCP properly relied on the IME’s January 28, 2010 impairment determination. It is not established that appellant has any lower extremity impairment due to her employment-related lumbar condition. While OWCP subsequently received additional treatment records and diagnostic studies, this evidence did not clearly establish the presence of any lower extremity impairment attributable to her July 6, 2006 employment injury.

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<sup>18</sup> *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

<sup>19</sup> *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

**CONCLUSION**

Appellant failed to establish that she has a ratable impairment of the lower extremities due to her employment-related lumbar condition.<sup>22</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 20, 2013  
Washington, DC

Richard J. Daschbach, Chief 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>22</sup> 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.