

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

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**T.M., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
TRANSPORTATION SECURITY  
ADMINISTRATION, Coppell, TX, Employer**

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**Docket No. 12-1233  
Issued: January 7, 2013**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 15, 2012 appellant filed a timely appeal from the April 17, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) granting 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 this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she has more than a one percent permanent impairment of her left leg and her right leg, for which she received schedule awards.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

OWCP accepted that on August 4, 2005 appellant, then a 28-year-old transportation security screener, sustained lumbar and thoracic region sprains, lumbosacral joint/ligament sprain, degeneration of lumbosacral intervertebral disc, herniated disc at L4-5 and psychogenic pain due to lifting a heavy bag at work. On March 31, 2009 she underwent surgery for a discectomy, hemilaminectomy and nerve root decompression at L4-5, which was authorized by OWCP.<sup>2</sup>

In a May 4, 2011 report, Dr. Clinton C. Battle, Jr., an attending Board-certified internist, performed an impairment rating under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009). He stated that appellant had a lumbar radiculopathy which affected the sensory and motor components of the nerves in both legs and noted, “This lumbar radiculopathy has allowed me to assign a 34 percent impairment rating for [appellant].” Dr. Battle attached a report entitled “ARCONS AIRS -- Impairment Rating Report” which indicated that appellant had 47 percent impairment of her left leg due to sensory and motor deficits associated with her left sciatic, L3, L4, L5 and S1 nerves. Appellant also had 47 percent impairment of her right leg due to sensory and motor deficits associated with her right sciatic, L3, L4, L5 and S1 nerves. The report did not contain any specific findings on examination or diagnostic testing and did not make any reference to the A.M.A., *Guides*.

On June 13, 2011 appellant filed a claim for a schedule award due to her accepted work injuries.

On June 21, 2011 Dr. Henry Mobley, a Board-certified internist serving as a medical adviser, stated that the May 4, 2011 impairment rating of Dr. Battle did not meet OWCP’s requirements for a probative medical opinion due to the lack of descriptive detail, duplication (use of sciatic and lumbar spinal nerve roots) and failure to use *The Guides Newsletter*, “Rating Spinal Nerve Extremity Impairment Using the sixth edition” (July to August 2009) [hereinafter *The Guides Newsletter*] to evaluate spinal nerve root impairments. Dr. Mobley recommended that an impairment evaluation be obtained from a Board-certified specialist familiar with the sixth edition of the A.M.A., *Guides* and OWCP procedures.

OWCP referred appellant to Dr. Brett J. Bolte, a Board-certified physical medicine and rehabilitation physician, for a second opinion examination and opinion of the extent of her leg impairment.

In an August 3, 2011 report, Dr. Bolte described appellant’s medical history and reported the findings of his examination. He diagnosed lumbar disc herniation at L4-5, now status post lumbar laminectomy, with radicular symptoms but without evidence of active radiculopathy. Dr. Bolte stated that no calf atrophy was noted and indicated that appellant could walk on both

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<sup>2</sup> After appellant filed an occupational disease claim in late 2010, OWCP accepted that she sustained bilateral wrist, hand and interphalangeal tendinitis, bilateral wrist and carpus enthesopathy, bilateral wrist and interphalangeal sprains and chronic pain syndrome due to repetitively pushing an ultraviolet light button at work. The matter of whether appellant has a permanent impairment of her hands or arms is not currently before the Board.

heels and toes. Appellant walked slowly with a symmetrical gait, using a cane which she did not appear to use on a continual basis. Sensation was diminished in a patchy distribution, not following anatomical dermatomes. Dr. Bolte indicated that, under Figure 16-3 and Table 16-12 of the sixth edition of the A.M.A., *Guides* (pages 524 and 537), appellant fell under the sural sensory nerve diagnostic category (sensory S1 root) in each leg with a default value of three percent leg impairment. He indicated that appellant's right leg condition was more severe than her left leg condition which warranted a move one space to the right of the default value on Table 16-12 and rendered a four percent impairment of her right leg. Appellant's left leg impairment stayed at the default value of three percent impairment.

On August 9, 2011 Dr. Mobley reviewed Dr. Bolte's August 3, 2011 report. He stated that evaluation of leg impairment required an approach that was outlined in *The Guides Newsletter*. Dr. Mobley recommended that Dr. Bolte be asked to submit a supplementary report regarding appellant's leg impairment by applying the standards of the *The Guides Newsletter*.

In a December 21, 2011 letter, appellant took issue with Dr. Bolte's evaluation and asserted that it was not true that she did not have an active leg radiculopathy as she experienced pain and a burning sensation which radiated into her legs. She stated that he improperly reported that she could walk on her heel and toes upon examination.

In a January 3, 2012 report, Dr. Bolte repeated his previous description of appellant's medical history and examination findings. He evaluated her leg impairment under *The Guides Newsletter* and stated:

“Diagnosis is Bilateral S1 radiculopathy with mild sensory deficit and no motor weakness. Based on Proposed Table 2, this is a [c]lass 1 Impairment with a 1 percent default [lower extremity] impairment.

Her Functional History -- Table 16-6 [on page 516 of the sixth edition of the A.M.A., *Guides*] is grade modifier 2.

Her Clinical Studies -- Table 16-8 [on page 519] is grade modifier 2. Together, these move her to fall rating two positions to the right to [g]rade E.

This is a one percent lower extremity impairment for each side. Since it is bilateral, these two impairments are combined for a total two percent lower extremity impairment.

Summary: Two percent lower extremity impairment with date of [maximum medical improvement] established as July 14, 2010.”

On March 22, 2012 Dr. Ronald Blum, a Board-certified orthopedic surgeon and OWCP medical adviser, provided an evaluation of appellant's leg impairment under the standards of the *The Guides Newsletter*. The evaluation relied on the findings Dr. Bolte on January 3, 2012. Dr. Blum agreed that appellant had a one percent permanent impairment of her left leg and a one percent permanent impairment of her right leg

In an April 17, 2012 decision, OWCP granted appellant a schedule award for a one percent permanent impairment of the left and right legs. The awards ran for 5.76 weeks from January 3 to February 12, 2012. It was based on the January 3, 2012 report of Dr. Bolte and the March 22, 2012 report of Dr. Blum.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>3</sup> and its implementing regulations<sup>4</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>5</sup> The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.<sup>6</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>7</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>8</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's procedures indicate that *The Guides Newsletter*, "Rating Spinal Nerve Extremity Impairment Using the Sixth Edition" (July to August 2009) is to be applied.<sup>9</sup>

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> *Id.*

<sup>6</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>7</sup> *Pamela J. Darling*, 49 ECAB 286 (1998).

<sup>8</sup> *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>9</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 Guides Newsletter* is included as Exhibit 4.

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 grade modifier for Functional History (GMFH) and, if electrodiagnostic testing was done, grade modifier for Clinical Studies (GMCS).<sup>10</sup> The net adjustment formula is (GMFH - CDX) + (GMCS - CDX).<sup>11</sup>

Under OWCP procedures, the attending physician should make the evaluation of permanent impairment whenever possible.<sup>12</sup> OWCP procedures also generally provide that the OWCP may choose to request an opinion from a second opinion specialist when the existing medical evidence is inadequate, including that obtained from an attending physician, and a detailed, comprehensive report and opinion is needed from a specialist in the appropriate field.<sup>13</sup>

### ANALYSIS

OWCP accepted that on August 4, 2005 appellant sustained lumbar and thoracic region sprains, lumbosacral joint/ligament sprain, degeneration of lumbosacral intervertebral disc, herniated disc at L4-5 and psychogenic pain. In an April 17, 2012 decision, it granted her a schedule award for a one percent permanent impairment of her left leg and a one percent permanent impairment of her right leg. The awards were based on the January 3, 2012 report of Dr. Bolte, an OWCP referral physician Board-certified in physical medicine and rehabilitation, and the March 22, 2012 report of Dr. Blum, an OWCP medical adviser, a Board-certified orthopedic surgeon.

The Board finds that the weight of medical opinion established a one percent permanent impairment of her left leg and a one percent permanent impairment of her right leg.

The Board notes that Dr. Bolte and Dr. Blum properly evaluated appellant's leg impairment under the standards of *The Guides Newsletter* and the sixth edition of the A.M.A., *Guides*. On January 3, 2012 Dr. Bolte provided a detailed description of appellant's medical history and the findings on examination. He indicated that her bilateral S1 radiculopathy (with mild sensory deficit and no motor weakness) warranted a class 1 Impairment with a one percent default impairment in each leg under Proposed Table 2 in *The Guides Newsletter*.<sup>14</sup> Appellant's functional history under Table 16-6 on page 516 of the sixth edition of the A.M.A., *Guides* fell under grade modifier 2 and her clinical studies under Table 16-8 on page 519 fell under grade modifier 2. Dr. Bolte indicated that application of the net adjustment formula meant that appellant's impairment in each leg moved two positions to the right on Proposed Table 2 to

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<sup>10</sup> A.M.A., *Guides* 515-21, 533 (including Table 16-6 and Table 16-8). *The Guides Newsletter* provides that grade modifiers are derived from the appropriate tables in the sixth edition of the A.M.A., *Guides*.

<sup>11</sup> A.M.A., *Guides* 521.

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.c (January 2010).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.4 (September 2010).

<sup>14</sup> See *supra* note 9.

grade E (still one percent).<sup>15</sup> Therefore, appellant had a one percent permanent impairment in each leg.<sup>16</sup> On March 22, 2012 Dr. Blum properly conducted a similar evaluation of appellant's leg impairment and also concluded that appellant had a one percent permanent impairment in each leg.

The record also contains a May 4, 2011 report in which Dr. Battle, an attending Board-certified internist, concluded that appellant had a 47 percent impairment of her left leg due to sensory and motor deficits associated with her left sciatic, L3, L4, L5 and S1 nerves and a 47 percent impairment of her right leg due to sensory and motor deficits associated with her right sciatic, L3, L4, L5 and S1 nerves. On appeal, appellant contended that Dr. Battle's report created a conflict in the medical opinion evidence regarding the extent of her leg impairment. The Board finds that his rating is of reduced probative value on the relevant issue because Dr. Battle did not explain what specific findings on which he relied detail how his evaluation was conducted in accordance with the relevant standards of *The Guides Newsletter* and the sixth edition of the A.M.A., *Guides*.

On appeal, appellant asserted that OWCP should have requested additional clarification from Dr. Battle. The record establishes that OWCP further developed the medical evidence by referring appellant for a second opinion examination and evaluation on impairment. As noted above, OWCP procedures provide that OWCP may choose to request an opinion from a second opinion specialist when the existing medical evidence is inadequate, including that obtained from an attending physician, and a detailed, comprehensive report is needed from a specialist in the appropriate field.<sup>17</sup>

For these reasons, appellant did not show that she is entitled to additional schedule award compensation.<sup>18</sup> She 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 did not meet her burden of proof to establish that she has more than a one percent permanent impairment of her left leg and a one percent permanent impairment of her right leg, for which she received a schedule award.

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<sup>15</sup> See *supra* notes 10 and 11. Before OWCP and on appeal, appellant claimed that Dr. Bolte did not report the full extent of her leg symptoms and that he falsely reported that she could walk on her heels and toes on examination. However, she has not presented evidence showing that Dr. Bolte's characterization of her leg condition was inaccurate.

<sup>16</sup> The Board notes that OWCP had properly determined that Dr. Bolte's August 3, 2011 impairment rating was not conducted in accordance with the relevant standards and requested that he produce a supplemental report, *i.e.*, the report he produced on January 3, 2012.

<sup>17</sup> See *supra* note 13.

<sup>18</sup> Appellant submitted additional evidence after OWCP's April 17, 2012 decision, but the Board cannot consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

**ORDER**

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

Issued: January 7, 2013  
Washington, DC

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

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

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