

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

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A.B., Appellant	)	
	)	
and	)	Docket No. 12-1392
	)	Issued: January 24, 2013
	)	
DEPARTMENT OF VETERANS AFFAIRS,	)	
VETERANS ADMINISTRATION MEDICAL	)	
CENTER, Danville, IL, Employer	)	

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Appearances: *Case Submitted on the Record*  
*Alan J. Shapiro, Esq., for the appellant*  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On June 4, 2012 appellant, through her attorney, filed a timely appeal from the May 8, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for schedule award compensation. 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 sustained permanent impairment to her legs.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

OWCP accepted that on December 9, 2009 appellant, then a 45-year-old nursing assistant, sustained left shoulder, left upper arm and lumbar strains and lumbar spondylosis when she was assaulted by a patient at work.<sup>2</sup> Appellant stopped work on December 9, 2009 but returned to light-duty work about a week later.

In a December 14, 2009 report, Dr. Christine M. Cisneros, an attending Board-certified preventive medicine physician, noted that appellant reported low back pain with no pain radiating into her legs. Physical examination revealed negative straight leg raise bilaterally. On December 17, 2009 Dr. Cisneros noted that appellant reported that her pain was confined to the small of her back. On examination, appellant's back muscles were supple and she exhibited good flexion and extension. Dr. Cisneros observed negative straight leg raising bilaterally on other office visits, including a visit on January 4, 2010.

Magnetic resonance imaging scan testing of appellant's lumbar spine obtained on January 7, 2010 revealed a prior left laminectomy at the L5-S1, disc bulging at the L4-5 and a right ovarian cyst. Dr. Cisneros noted that, by February 2010, appellant began to report pain radiating from her back down into her left leg. Electromyogram (EMG) testing from March 8, 2010 showed mild root irritation at the L4-5 and L5-S1 roots, with no indication of neuropathy or entrapment of the sciatic nerve.

By report dated March 31, 2010, Dr. Cisneros noted that on physical examination appellant's movements were relatively fluid. She was tender to palpation over the left S1 area, but there was normal appreciable muscle spasm and she showed no distress with prolonged sitting. Dr. Cisneros stated that she was struck by the changes in appellant's complaints. For example, she felt that she was initially dealing with a piriformis or an obturator syndrome, but now she was addressing appellant's sacroiliac joint discomfort. Given these new complaints, Dr. Cisneros was confused by appellant's ability to sit comfortably in the clinic.

In an April 22, 2010 report, Dr. Victoria Johnson, an attending Board-certified physical medicine and rehabilitation physician, advised that appellant had a full range of back motion on flexion, extension and lateral bending. Straight leg raising reproduced back pain on the left, but was negative on the right and appellant had 5/5 strength in her leg muscles. Dr. Johnson diagnosed lumbar spondylosis without radiculopathy. On May 17, 2010 she noted that appellant had returned to work without physical restrictions and was doing well. On examination, Dr. Johnson found no tenderness in the lumbar paraspinals. On September 27, 2010 she indicated that appellant had reached maximum medical improvement. Dr. Johnson suggested that appellant undergo a functional capacity evaluation.

In a July 2, 2011 report, Dr. William Grant, an attending Board-certified internist, stated that appellant described constant painful discomfort in her lumbosacral spine with painful paresthesias radiating down her left leg and occasional painful numbness radiating down her right leg. There was a positive straight leg test on the left at 15 degrees and on the right at 25 degrees. Dr. Grant diagnosed sprain of the lumbosacral joint/ligament, left shoulder sprain,

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<sup>2</sup> Appellant indicated that she fell to the floor with the combative patient.

upper arm sprain and lumbosacral spondylosis. He opined that appellant had 25 percent permanent impairment of her left leg and 9 percent permanent impairment of her right leg under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6<sup>th</sup> ed. 2009). Dr. Grant made reference to Table 16-12 on page 535 indicating that appellant had a class 2 moderate motor deficit of the sciatic nerve on the left and a class 1 mild motor deficit of the sciatic nerve on the right.

On September 15, 2011 appellant filed a claim for a schedule award due to her accepted injuries.

On September 20, 2011 OWCP referred the claim to Dr. Sanjai Shukla, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, for review and a rating of permanent impairment due to appellant's work injuries.

By report dated September 25, 2011, Dr. Shukla reviewed Dr. Grant's report and advised that it did not establish that appellant had a ratable impairment due to the accepted injuries. He noted that Dr. Grant's July 2011 findings were not supported by the medical evaluations presented by the physicians of record. Dr. Shukla stated that Dr. Johnson had indicated negative straight leg tests for pain radiating down into the legs. He further noted that she found that appellant had 5/5 strength in her leg muscles and that she had diagnosed lumbar spondylosis without radiculopathy. Dr. Shukla stated:

"Using the spine physician's evaluation, [appellant] does n[o]t have a ratable impairment. She has full strength, a normal gait and the ability to toe walk without difficulty. Impairment for both lower extremities is zero percent

"This rating differs from Dr. Grant's mainly because of the discrepancies in physical examination. This rating was based on the evaluation by a spine physician."

By decision dated November 3, 2011, OWCP denied appellant's schedule award claim on the grounds that she did not submit sufficient medical evidence to establish permanent impairment due to her work injuries. It noted discrepancies in Dr. Grant's report and that the weight of the medical opinion evidence rested with the opinion of Dr. Shukla.

Appellant disagreed with OWCP's decision and requested an oral hearing before an OWCP hearing representative. At the February 9, 2012 hearing, she was represented by counsel. Appellant testified as to the history of her injury. She advised that although Dr. Johnson diagnosed lumbar spondylosis without radiculopathy, she told Dr. Johnson that she did have radiating pain. Appellant testified that she did not have any back injury after the December 2009 injury event in the instant claim. Counsel argued that Dr. Grant did not have to delineate what findings might be due to preexisting conditions. He claimed that an OWCP medical adviser was only supposed to accept the findings as reported by a physician and then determine whether the calculations were correct based upon those findings.

In a May 8, 2012 decision, OWCP's hearing representative affirmed the November 3, 2011 decision denying appellant's claim for schedule award compensation.

## LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim, including that he sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.<sup>3</sup>

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 appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.<sup>4</sup>

The schedule award provision of FECA<sup>5</sup> and its implementing regulations<sup>6</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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>7</sup> The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.<sup>8</sup> 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.<sup>9</sup>

## ANALYSIS

OWCP accepted that on December 9, 2009 appellant sustained left shoulder, left upper arm and lumbar strains and lumbar spondylosis when she was assaulted by a patient at work. Appellant submitted a July 2, 2011 report of Dr. Grant, an attending Board-certified internist and filed a claim for a schedule award due to her accepted work injuries. In November 3, 2011 and

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<sup>3</sup> See *Bobbie F. Cowart*, 55 ECAB 476 (2004). In *Cowart*, the employee claimed entitlement to a schedule award for permanent impairment of her left ear due to employment-related hearing loss. The Board determined that appellant did not establish that an employment-related condition contributed to her hearing loss and, therefore, it denied her claim for entitlement to a schedule award for the left ear.

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404 (1999).

<sup>7</sup> *Id.*

<sup>8</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>9</sup> See *Dale B. Larson*, 41 ECAB 481, 490 (1990).

May 8, 2012 decisions, OWCP denied her schedule award claim finding that the medical evidence did not establish that she had impairment related to employment factors.

Appellant was treated by Dr. Cisneros, a Board-certified preventive medicine physician, and Dr. Johnson, a Board-certified physical medicine and rehabilitation physician. They reportedly found in the months following her December 9, 2009 work injury that she did not have radicular symptoms in her legs. These findings were based on diagnostic testing (including EMG testing) and physical examination findings (including straight leg testing). Appellant did not complain of left leg radicular symptoms until February 2010.

In support of her schedule award claim, appellant submitted a July 2, 2011 report, from Dr. Grant who found that she had 25 percent permanent impairment of her left leg and 9 percent permanent impairment of her right leg under the sixth edition of the A.M.A., *Guides*.<sup>10</sup> Dr. Grant indicated in the physical findings portion of his report that appellant had positive straight leg tests bilaterally. However, his opinion on impairment is of diminished probative value because he failed to provide adequate medical rationale explaining how the observed deficits were related to the accepted work injuries. Dr. Grant gave no indication of having reviewed appellant's prior medical records with regard to the accepted injuries or previous diagnostic testing. He did not explain how the findings of Dr. Cisneros and Dr. Johnson comported with his apparent belief that appellant's radicular symptoms in July 2011 were related to her December 9, 2009 work injuries.<sup>11</sup>

On September 25, 2011 Dr. Shukla, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, reviewed the record and determined that there was insufficient evidence to support that the impairment reported by Dr. Grant would be due to appellant's accepted injuries, as the findings were not consistent with those of her prior treating physicians. He advised that there was no evidence of impairment due to the accepted injuries. The Board finds that OWCP properly relied on the report of Dr. Shukla in denying appellant's schedule award claim as he provided a review of the medical evidence and provided reasoning for his conclusion that she had sustained no permanent impairment due to the accepted injuries.

For these reasons, appellant did not show that she was entitled to schedule award compensation and OWCP properly denied her claim. 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.

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<sup>10</sup> Dr. Grant made reference to Table 16-12 on page 535 indicating that appellant had a class 2 moderate motor deficit of the sciatic nerve on the left and a class 1 mild motor deficit of the sciatic nerve on the right.

<sup>11</sup> Counsel suggested that appellant had preexisting leg impairment that should be included in any impairment rating evaluation, but the medical record does not support such a finding in the present case. *See supra* note 9. Furthermore, the Board has held that where the claimant did not demonstrate any permanent impairment caused by the accepted occupational exposure, the claim was not ripe for consideration of any preexisting impairment. *Thomas P. Lavin, 57 ECAB 353 (2006)*.

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she was entitled to schedule award compensation for permanent impairment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 8, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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