

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

C.S., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Wood River, IL, Employer

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**Docket No. 13-600
Issued: July 26, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 17, 2013 appellant timely appealed the January 9, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied an additional schedule award. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award claim.

ISSUE

The issue is whether appellant has a ratable impairment of the right lower extremity due to his employment-related lumbar condition and greater than four percent impairment of the left lower extremity.

¹ 5 U.S.C. §§ 8101-8193 (2006).

FACTUAL HISTORY

This case was previously before the Board.² Appellant, a 55-year-old customer service manager, has an accepted claim for lumbar sprain which arose on or about January 20, 2009.³ In an April 20, 2010 decision, OWCP granted a schedule award for four percent impairment of the left lower extremity. Appellant had no (zero percent) impairment of the right lower extremity. An OWCP district medical adviser (DMA) calculated appellant's lower extremity impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (2008).⁴

The Board has twice set aside OWCP's lumbar-related lower extremity impairment rating because the DMA had not applied the preferred method for rating spinal nerve extremity impairment under FECA. The Board explained that the A.M.A., *Guides* (6th ed. 2008) provided a specific methodology for rating spinal nerve extremity impairment which was designed for situations where a particular jurisdiction mandated ratings for extremities and precluded ratings for the spine.⁵ The Board further noted that the appropriate tables for rating spinal nerve extremity impairment were incorporated in the FECA procedure manual.⁶

Following the Board's November 2012 remand, OWCP forwarded the claims file to Dr. Christopher Gross, a medical adviser. On December 24, 2012, Dr. Gross reviewed appellant's medical records, including the latest physical examination findings dated October 17, 2011.⁷ He found zero percent impairment of both lower extremities.

By decision dated January 9, 2013, OWCP found that appellant had not established bilateral lower extremity impairment in excess of the previous four percent award for the left lower extremity.

² Docket Nos. 11-198 (issued August 3, 2011) and 12-1279 (issued November 26, 2012). The Board's November 26, 2012 order remanding case and its August 3, 2011 decision are incorporated herein by reference.

³ Appellant had previously undergone a left L5-S1 microdiscectomy in February 2008.

⁴ In a January 20, 2010 report, Dr. Neil Ghodadra, a medical adviser, applied Table 16-12, Peripheral Nerve Impairment -- Lower Extremity Impairments (LEI), A.M.A., *Guides* 534-36 (6th ed. 2008) in determining appellant's impairment.

⁵ The methodology and applicable tables were published in the July/August 2009 edition of *The Guides Newsletter*, "Rating Spinal Nerve Extremity Impairment Using the Sixth Edition."

⁶ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010). Despite the Board's explicit instructions, on remand a second DMA also incorrectly relied on Table 16-12, A.M.A., *Guides* 534-36 (6th ed. 2008). OWCP then relied upon this February 19, 2012 report in support of its May 3, 2012 decision which the Board subsequently set aside.

⁷ Appellant was most recently examined by Dr. William R. Bartley, a Board-certified internist.

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.⁸ 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 A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁹ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).¹⁰

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or the implementing regulations.¹¹ 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.¹² However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.¹³

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

ANALYSIS

The Board finds that the case is not in posture for decision. Dr. Gross noted that appellant had suffered a work-related back sprain for which he had an operation, but that no information regarding the operation had been provided. The Board noted that the February 20, 2008 surgical report is of record and thus, it is unclear why it was purportedly unavailable to Dr. Gross for review. The surgical report indicated that appellant's February 2008 left L5-S1 microdiscectomy addressed a preexisting disc herniation rather than the January 20, 2009 employment-related lumbar sprain.

⁸ 5 U.S.C. § 8107(c).

⁹ 20 C.F.R. § 10.404.

¹⁰ See Federal (FECA) Procedure Manual, *supra* note 6, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

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

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

¹³ Federal (FECA) Procedure Manual, *supra* note 10 at Chapter 2.808.6a(3).

¹⁴ Federal (FECA) Procedure Manual, *supra* note 6.

¹⁵ *Id.*

¹⁶ *Id.*

The DMA also appears to have mischaracterized Dr. Bartley's October 17, 2011 findings. As noted, FECA-approved methodology for rating spinal nerve extremity impairment is premised on evidence of radiculopathy affecting the upper and/or lower extremities.¹⁷ In reviewing Dr. Bartley's report, Dr. Gross indicated that there was no mention of any sensory or motor deficits. Dr. Gross further states generally that radicular pain was not a sign of sensory impairment. Dr. Bartley specifically mentioned that appellant's October 14, 2011 nerve conduction study (NCS) was abnormal and that the "F wave abnormality on the left indicates L5-S1 radiculopathy." Dr. Gross did not address the recent NCS results referenced by Dr. Bartley.

Once OWCP undertakes development of the record it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁸ Accordingly, the case will once again be remanded for further medical development. After OWCP has developed the case record to the extent it deems necessary, a *de novo* decision shall be issued regarding appellant's entitlement to a schedule award.

CONCLUSION

The case is not in posture for decision.

¹⁷ *Id.*

¹⁸ *Richard F. Williams*, 55 ECAB 343, 346 (2004).

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2013 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: July 26, 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