

FACTUAL HISTORY

On August 19, 1990 appellant, then a 31-year-old firefighter, filed a traumatic injury claim (Form CA-1) alleging that on August 18, 1990 he was lifting a stump and experienced pain in his abdomen. He notified his supervisor and first sought medical care on August 19, 1990. OWCP accepted appellant's claim for right inguinal hernia and post-traumatic ilioinguinal entrapment.

By decision dated July 6, 2000, OWCP terminated appellant's compensation benefits effective July 16, 2000 on the grounds that he had no further condition or disability due to his August 18, 1990 employment injury. Appellant requested reconsideration and by decision dated February 28, 2002, OWCP affirmed the July 6, 2000 decision. He appealed the February 28, 2002 decision to the Board. By decision issued January 14, 2003, the Board affirmed the February 28, 2002 OWCP decision terminating appellant's compensation benefits effective July 16, 2000.² Appellant subsequently submitted a claim for compensation (Form CA-7) commencing July 5, 2000. By decision dated December 5, 2012, OWCP denied appellant's claim for compensation.

On May 18, 2011 appellant filed a claim for a schedule award. By letter dated October 3, 2011, OWCP noted that the evidence of record did not contain a physician's report which established that he had reached maximum medical improvement or provided an impairment rating. It noted that while appellant's claim was accepted for inguinal hernia of the abdomen, it was not a scheduled member or function. On April 5, 2012 appellant, through counsel, again filed a claim for a schedule award.

By letter dated April 17, 2012, OWCP informed appellant of the medical evidence necessary to establish his schedule award claim and provided him with 30 days to submit additional evidence.

By decision dated May 31, 2012, OWCP denied appellant's claim for a schedule award, finding that the evidence was not sufficient to establish that he sustained any permanent impairment to a scheduled member or function of the body under section 8107.

By letter dated June 8, 2012, appellant, through counsel, requested a telephone hearing before the Branch of Hearings and Review.

In a July 3, 2012 report, Dr. Michael E. Hebrard, Board-certified in physical medicine and rehabilitation, noted appellant's complaint of severe pain radiating down into his low back, right thigh and foot. He underwent electromyography and nerve conduction studies on that same date. Dr. Hebrard noted electrodiagnostic evidence for a right L5-S1 radiculopathy and peripheral neuropathy. He provided a history noting that appellant was injured after trying to hold a tree up by himself, causing pain in his low back and right groin area. Appellant was treated and evaluated by several physicians who diagnosed inguinal adenopathy as well as neuropathy. He was subsequently diagnosed with right-sided ilioinguinal neuropathy. Dr. Hebrard noted an August 15, 1995 abdominal ultrasound which found no significant

² Docket No. 02-1614 (issued January 14, 2003).

abnormalities. Upon physical examination and review of diagnostic testing, he concluded that appellant did not suffer from inguinal hernia. Based on his medical history and mechanism of injury, Dr. Hebrard opined that appellant's condition was more consistent with femoral versus sciatic neuropathy. He stated that the current electrodiagnostic studies performed showed probable right sciatic neuropathy per electromyogram. Based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (A.M.A., *Guides*), Dr. Hebrard opined that appellant had a 13 percent sciatic nerve impairment.⁴

At the October 15, 2012 hearing, counsel argued that there was a question as to whether appellant suffered a ligament injury rather than a hernia injury. The record was held open for 30 days. Appellant submitted four additional narrative statements addressing his injury and treatment.

By decision dated November 27, 2012, OWCP's hearing representative affirmed OWCP's May 31, 2012 decision finding that the evidence of record failed to establish that appellant sustained permanent impairment of a scheduled member.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.⁵ 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* (6th ed. 2009) (A.M.A., *Guides*) has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶

It is the claimant's burden to establish that he or she has sustained a permanent impairment of the scheduled member or function as a result of any employment injury.⁷ OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of maximum medical improvement), describes the impairment in sufficient detail so that it can be visualized on review and computes the percentage of impairment in accordance with the A.M.A., *Guides*.⁸

³ A.M.A., *Guides* (6th ed. 2009).

⁴ *Id.* at 535, Table 16-11.

⁵ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

⁶ *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

⁷ *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(b) (August 2002).

No schedule award is payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.⁹ FECA identifies members such as the arm, leg, hand, foot, thumb and finger, organs to include the eye and functions as loss of hearing and loss of vision.¹⁰ Section 8107(c)(22) of FECA provides for the payment of compensation for permanent loss of any other important external or internal organ of the body as determined by the Secretary of Labor.¹¹ The Secretary of Labor has made such a determination and pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the schedule.¹²

ANALYSIS

OWCP accepted appellant's claim for right inguinal hernia and post-traumatic ilioinguinal nerve entrapment due to an August 18, 1990 work-related injury. On April 5, 2012 appellant filed a claim for a schedule award. By decisions dated May 31 and November 28, 2012, OWCP denied his schedule award claim finding that he had not submitted sufficient evidence to establish that he sustained a permanent impairment to a scheduled member.

The Board finds that appellant has not submitted sufficient evidence to establish that he sustained any permanent impairment to a scheduled member as defined under section 8107 of FECA or the implementing federal regulations. By letter dated April 17, 2012, OWCP informed him of the evidence necessary to establish a schedule award. It requested that appellant submit an impairment evaluation from his attending physician in accordance with the sixth edition of the A.M.A., *Guides*. Appellant submitted a July 3, 2012 impairment evaluation from Dr. Hebrard, who opined that appellant's condition was misdiagnosed as an inguinal hernia when he most likely suffered from right sciatic neuropathy. Using Table 16-11 of the A.M.A., *Guides*, Dr. Hebrard calculated a 13 percent permanent impairment of the sciatic nerve.

Dr. Hebrard did not attribute appellant's permanent impairment to the accepted right inguinal hernia or post-traumatic ilioinguinal nerve entrapment. Rather, he provided an impairment rating for the sciatic nerve, a condition which has not been accepted by OWCP. Dr. Hebrard failed to provide an adequate explanation as to how appellant's sciatic nerve impairment was related to the original August 18, 1990 injury or why the initial diagnosis of inguinal hernia was inaccurate.¹³ His opinion on causal relation was speculative.

A schedule award cannot be granted for permanent impairment based on appellant's hernia condition because the hernia or abdomen have not been included under FECA or the

⁹ See *Leroy M. Terska*, 53 ECAB 247 (2001).

¹⁰ 5 U.S.C. § 8107(c).

¹¹ *Id.* at § 8122(c)(22).

¹² 20 C.F.R. § 10.404; *Henry B. Ford, III*, 52 ECAB 220 (2001).

¹³ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment. See *Lee R. Haywood*, 48 ECAB 145 (1996).

regulations as a scheduled member.¹⁴ The nature of the injury sustained by him in 1990 is not included in the schedule of body parts or functions for which a schedule award may be payable.

It is appellant's burden of proof to establish that he sustained a permanent impairment of a scheduled member as a result of an employment injury.¹⁵ OWCP properly denied his schedule award claim.¹⁶

CONCLUSION

The Board finds that appellant has not established that he is entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated November 27, 2012 is affirmed.

Issued: June 19, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹⁴ *K.H.*, Docket No. 09-275 (issued August 14, 2009).

¹⁵ *See supra* at note 7.

¹⁶ *L.F.*, Docket No. 10-343 (issued November 29, 2010); *V.W.*, Docket No. 09-2026 (issued February 16, 2010).