

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

K.D., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL
FACILITIES ENGINEERING COMMAND,
Washington, DC, Employer**

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**Docket No. 13-773
Issued: June 10, 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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On February 13, 2013 appellant timely appealed the November 8, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his claim for a 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 claim.²

ISSUE

The issue is whether appellant has a ratable impairment of the upper extremities due to his employment-related cervical condition.

¹ 5 U.S.C. §§ 8101-8193.

² The record on appeal contains evidence received after OWCP issued its November 8, 2012 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

Appellant, a 70-year-old retired senior cost engineer, was struck by a motor vehicle in the performance of duty on July 13, 2005. OWCP accepted his traumatic injury claim for neck sprain, postconcussion syndrome, insomnia and closed dislocations of the 3rd through 7th cervical vertebrae. Appellant worked part-time, limited duty and OWCP paid him wage-loss compensation through September 29, 2012. In advance of his anticipated retirement, he filed a claim for a schedule award (Form CA-7).

On August 1, 2012 OWCP acknowledged receipt of appellant's schedule award claim and advised him of the need to submit an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* A.M.A., *Guides* (6th ed. 2008). It provided specific guidance on rating spinal nerve extremity impairment under FECA and the A.M.A., *Guides* (6th ed. 2008). Appellant was encouraged to provide this information to his treating physician.

OWCP subsequently received prior treatment records from Dr. Jatinder Narula, a Board-certified physiatrist with a subspecialty in pain medicine. Additionally, it received July 25 and August 31, 2012 treatment records from Dr. Baljinder K. Brar, a Board-certified physiatrist. At that time, neither physician provided a specific rating for spinal nerve extremity impairment consistent with both FECA and the A.M.A., *Guides* (6th ed. 2008).

By decision dated November 8, 2012, OWCP denied appellant's claim for a schedule award.

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.³ 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.⁴ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).⁵

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or the implementing regulations.⁶ Neither FECA nor the regulations provide

³ 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.404.

⁵ 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).

⁶ *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.⁷ However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.⁸

The sixth edition of the A.M.A., *Guides* provides a specific methodology for rating spinal nerve extremity impairment.⁹ It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine.¹⁰ The FECA-approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities.¹¹

ANALYSIS

Appellant bears the burden of demonstrating his entitlement to benefits under FECA.¹² In August 2012, OWCP advised him of the necessity of submitting an impairment rating in accordance with the A.M.A., *Guides* (6th ed. 2008). In light of his accepted cervical condition, appellant received specific instructions on rating spinal nerve extremity impairment. The requested impairment rating was not received within a reasonable time frame, and therefore, OWCP denied his claim for a schedule award on November 8, 2012.

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.

CONCLUSION

Appellant failed to establish that he has a ratable impairment of the upper extremities.

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

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a(3) (January 2010).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

¹⁰ *Id.*

¹¹ *Id.*

¹² 20 C.F.R. § 10.115(f).

ORDER

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

Issued: June 10, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board