

FACTUAL HISTORY

On June 16, 2009 appellant, then a 53-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on that same date she sustained a lower back and right shoulder injury as a result of lifting a tray of mail. By decision dated July 23, 2009, OWCP accepted the claim for sprain of back, lumbar region. By decision dated May 7, 2010, it expanded the claim to include permanent aggravation of lumbosacral radiculitis, permanent aggravation of degeneration of lumbar intervertebral disc and permanent aggravation of lumbosacral spondylosis.

OWCP authorized surgery for left L4-5 laminectomy for stenosis on June 28, 2010.³ Appellant returned to full duty on August 23, 2010.

On January 6, 2012 appellant filed a claim for a schedule award.

In a January 25, 2011 medical report, Dr. Jose M. Arias, a Board-certified neurological surgeon, reported that appellant returned for a follow up of her left L4-5 laminectomy for stenosis procedure performed on June 28, 2010. He reported that she had improved with basically no significant problems in regards to the left leg. Dr. Arias stated that appellant had no pain, whatsoever, and the numbness that she was experiencing before had improved significantly. He noted minor tingling sensation proximally in the leg on a rare basis. Dr. Arias noted that appellant experienced occasional back pain in association with prolonged standing. He stated that physical examination of the cranial nerves revealed that appellant was able to elevate both shoulders symmetrically. A peripheral neural examination revealed deep tendon reflexes as symmetric in the upper and lower extremities. A musculoskeletal examination revealed full range of motion in the back and neck and that strength was full in all groups of muscles in the lower extremities. Dr. Arias concluded that appellant had reached maximum medical improvement from her June 28, 2010 surgery.

In a January 25, 2011 attending physician's report (Form CA-20), Dr. Arias diagnosed left leg radiculopathy and L4-5 stenosis. He checked the box marked "yes" when asked if he believed that appellant's condition was caused or aggravated by the employment activity.

In a February 17, 2012 functional capacity evaluation (FCE), Mark Vance, a physical therapist, reported that appellant related low back pain and left leg numbness before, during and after the FCE. The FCE found no lower extremity weakness and the examination revealed normal findings.

On June 5, 2012 OWCP routed Dr. Arias' report, the FCE, a series of questions, a statement of accepted facts and the case file to an OWCP medical adviser for review and a determination as to whether appellant sustained a permanent impairment and the date of maximum medical improvement. In the June 10, 2012 report, the medical adviser reported that

³ In a May 10, 2010 report, an OWCP medical adviser reported that, upon review of appellant's medical record, she suffered from right lower extremity radicular symptoms in an L4-5 distribution. A magnetic resonance imaging scan revealed disc herniation at the level of pathology. The medical adviser opined that appellant's requested surgery of L4-5 laminectomy/discectomy was related to the employment injury.

her claim was accepted for aggravation of lumbar degenerative disc disease, lumbosacral radiculopathy and lumbosacral spondylosis. Appellant had undergone surgical intervention. The medical adviser noted that the FCE stated, “no lower extremity weakness is noted.” He also noted that Dr. Arias’ January 25, 2011 medical report stated that appellant had basically no significant problems in regards to the left leg with no pain whatsoever and the numbness that she was experiencing before had improved significantly. The medical adviser further noted that Dr. Arias’ report stated that she did not have motor or sensory deficits. Thus, appellant would not have a ratable lower extremity impairment. He concluded that she had a zero percent permanent impairment of both the right and left lower extremities. Maximum medical improvement was noted as January 25, 2011, the date that Dr. Arias reported no lower extremity pain or weakness.

By decision dated July 13, 2012, OWCP denied appellant’s claim for a schedule award as the evidence was not sufficient to establish that she sustained any permanent impairment to a member or function of the body.

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.⁴ 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009) has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵

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.⁶ OWCP’s 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*.⁷

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

⁵ *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).

⁶ *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(b) (August 2002).

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.⁸ 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.⁹

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment.¹⁰ 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/August 2009) is to be applied.¹¹ FECA approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities.¹²

ANALYSIS

OWCP accepted appellant's claim for sprain of lumbar back, permanent aggravation of lumbosacral radiculitis, permanent aggravation of degeneration of lumbar intervertebral disc and permanent aggravation of lumbosacral spondylosis. The Board notes that a schedule award is not payable under FECA for injury to the spine¹³ or based on whole person impairment.¹⁴ However, 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.¹⁵ Appellant must establish impairment to a scheduled member caused by the accepted condition before an impairment due to a preexisting condition can be assessed.¹⁶ The instant record is not sufficient to establish that she has any impairment caused by her accepted sprain of lumbar back, permanent aggravation of lumbosacral radiculitis, permanent aggravation of degeneration of lumbar intervertebral disc and permanent aggravation of lumbosacral spondylosis conditions.

⁸ *Pamela J. Darling*, 49 ECAB 286 (1998).

⁹ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

¹¹ *See G.N.*, Docket No. 10-850 (issued November 12, 2010); *see also supra note 10* at Chapter 3.700, Exhibit 1, note 5 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

¹² *Supra note 7* at Chapter 2.808.6a(3) (January 2010).

¹³ *Supra note 8*.

¹⁴ *N.M.*, 58 ECAB 273 (2007).

¹⁵ *Supra note 9*.

¹⁶ *See generally Thomas P. Lavin*, 57 ECAB 353 (2006).

In his January 25, 2011 medical report, Dr. Arias reported that, following appellant's left L4-5 laminectomy for stenosis, she improved with basically no significant problems in regards to the left leg. He noted no pain, whatsoever, that numbness had improved significantly and that appellant only experienced a minor tingling sensation proximally in the leg on a rare basis. Dr. Arias noted occasional back pain associated with prolonged standing. Physical examination of the cranial nerves revealed that appellant was able to elevate both shoulders symmetrically. A peripheral neural examination revealed deep tendon reflexes as symmetric in the upper and lower extremities. A musculoskeletal examination revealed full range of motion in the back and neck and that strength was full in all groups of muscles in the lower extremities. Dr. Arias concluded that appellant had reached maximum medical improvement from her June 28, 2010 surgery.

The Board notes that OWCP's procedures provide that maximum medical improvement must be reached before a schedule award can be made.¹⁷ In this case, Dr. Arias found that appellant reached maximum medical improvement as of January 25, 2011; however, he advised that she had no significant problems in regards to the left leg, no pain whatsoever, no motor or sensory deficits and that strength was full in all groups of muscles in the lower extremities. He did not provide any permanent impairment rating for the lower extremity.¹⁸ A February 17, 2012 FCE noted that appellant complained of low back pain and left leg numbness before, during and after the FCE. The FCE, however, found no lower extremity weakness and the examination revealed normal findings.

OWCP forwarded the medical evidence and record to an OWCP medical adviser for review. The medical adviser reviewed Dr. Arias' reports and the FCE and properly concluded that appellant had no impairment of an extremity. He provided a well-reasoned report based on a proper factual and medical history and included detailed findings and rationale supporting his opinion. Based on the findings of Dr. Arias and the FCE, the examinations performed revealed normal sensory and motor findings in both lower extremities.¹⁹ As previously noted, FECA does not allow for permanent impairment ratings of the back without evidence of extremity impairment.²⁰ Thus, the record does not provide any medical opinion finding that appellant sustained permanent impairment of an extremity as a result of her employment injury. The Board finds that OWCP properly denied her claim for a schedule award.

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

The Board finds that appellant has not met her burden of proof to establish entitlement to a schedule award for permanent impairment.

¹⁷ *Supra* note 10 at Chapter 3.700.3(a)(1) (October 1990).

¹⁸ *E.D.*, Docket No. 10-967 (issued January 7, 2011).

¹⁹ *L.W.*, Docket No. 12-1613 (issued February 19, 2013).

²⁰ *Supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 13, 2012 is affirmed.

Issued: May 8, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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