



## **FACTUAL HISTORY**

On November 2, 2011 appellant, a 59-year-old clerk, sustained a traumatic injury in the performance of duty. While casing mail and twisting her body to the right, she heard a sound in her low back. Appellant's right side was a little painful and 20 minutes later she found it hard to walk. OWCP accepted her claim for thoracic/lumbosacral neuritis or radiculitis, not otherwise specified and for sprain of the right hip and thigh. Appellant received compensation for temporary total disability on the periodic rolls.

Appellant filed a claim for a schedule award. Dr. Jeffrey M. Fritz, a Board-certified anesthesiologist, rated her impairment on October 7, 2013 when found that she reached maximum medical improvement. Rating the spinal nerve impairment of the left lower extremity, Dr. Fritz identified L5 as the affected nerve root. He judged the severity of the sensory deficit as mild, with subjectively altered sensory perception but retained light touch and sharp/dull recognition. Using Proposed Table 2, spinal nerve impairment: lower extremity impairments,<sup>2</sup> Dr. Fritz found that a mild sensory deficit of the L5 nerve root represented a one percent impairment of the lower extremity. He made no adjustment: appellant's clinical studies and functional inventory were consistent with a mild problem. Appellant therefore had a one percent impairment of the left lower extremity due to L5 spinal nerve root deficit.

Rating the spinal nerve impairment of the right lower extremity, Dr. Fritz again identified L5 as the affected nerve root. As with the left, he judged the severity of the sensory deficit as mild. Dr. Fritz noted that appellant also had a mild motor deficit, with grade 4/5 strength against gravity with some resistance. Using proposed Table 2, he found that a mild sensory deficit of the L5 nerve root represented a one percent impairment of the lower extremity. Dr. Fritz also found that a mild motor deficit of the L5 nerve root represented a five percent impairment. Although clinical studies were consistent with a mild problem, appellant's functional inventory indicated a moderate problem. Dr. Fritz adjusted the default ratings to two and seven percent respectively, for a combined impairment rating of nine percent of the right lower extremity due to L5 spinal nerve root deficit.

Dr. Fritz also rated appellant's right lower extremity for the diagnosis of bursitis. Referring to the hip regional grid, page 512 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>3</sup> (A.M.A., *Guides*) he noted that hip bursitis with documented, chronically abnormal gait had a default impairment value of seven percent of the lower extremity. Dr. Fritz made no adjustment for grade modifiers, as all of them were consistent with a mild problem. Using the Combined Values Chart,<sup>4</sup> he determined that appellant had a 15 percent total impairment of the right lower extremity due to L5 spinal nerve root deficit and bursitis.

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<sup>2</sup> Rating spinal nerve extremity impairment using the sixth edition, *The Guides Newsletter* (A.M.A., Chicago, Ill.), July/August 2009.

<sup>3</sup> A.M.A., *Guides* 512 (6<sup>th</sup> ed. 2009) (hip regional grid).

<sup>4</sup> *Id.* at 604.

An OWCP medical adviser reviewed Dr. Fritz' impairment evaluation and agreed with his findings.

On December 12, 2013 OWCP granted schedule awards for a 1 percent impairment of appellant's left lower extremity and a 15 percent impairment of her right. From this award it deducted \$7,425.40 to recover an overpayment that had arisen earlier when appellant received a prohibited dual benefit of retirement and compensation benefits during a period of time.<sup>5</sup>

On appeal, appellant argued that she owes money to the Office of Personnel Management (OPM), not to OWCP and that she should repay only one, not both. She explained that she changed her election of benefits date several times and OWCP used an incorrect date to determine the overpayment. Appellant argues that OWCP needs to inform OPM of the correct election date and return to her the money it took out of her schedule award.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of FECA<sup>6</sup> and the implementing regulations<sup>7</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. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.<sup>8</sup>

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. OWCP has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>9</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

No schedule award is payable for a member, function or organ of the body not specified in FECA or the implementing regulations.<sup>11</sup> Neither FECA nor the implementing federal

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<sup>5</sup> OWCP issued its final overpayment decision on June 4, 2013. As it issued this decision more than 180 days prior to the filing of this appeal on March 20, 2014 the Board has no jurisdiction to review it. See 20 C.F.R. § 501.3(e).

<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

<sup>9</sup> See *supra* note 7; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010).

<sup>11</sup> *William Edwin Muir*, 27 ECAB 579 (1976).

regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine.<sup>12</sup> A claimant is not entitled to such an award.<sup>13</sup>

Amendments to FECA provide 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 schedule or nonscheduled member. 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.<sup>14</sup>

The sixth edition of the A.M.A., *Guides*, however, did not provide a separate mechanism for rating extremity impairment due to spinal nerve injuries. Dr. Fritz, the evaluating anesthesiologist, properly followed the A.M.A., *Guides* approach to rating spinal nerve impairments consistent with sixth edition.

For both the left and right legs, he identified L5 as the affected nerve root. The severity of the sensory deficit was mild bilaterally, with a mild motor deficit on the right. Dr. Fritz properly applied Proposed Table 2 to find one percent impairment bilaterally due to a mild sensory deficit and an additional five percent impairment on the right due to a mild motor deficit. Given appellant's moderate functional history on the right, he correctly adjusted the default impairments on the right to two and seven percent respectively, for a total of nine percent.<sup>15</sup>

Diagnosis-based impairment is the primary method of evaluating the lower limb. Impairment is determined first by identifying the relevant diagnosis, then by selecting the class of the impairment (no objective problem, mild problem, moderate problem, severe problem, very severe problem approaching total function loss), which will provide a default impairment rating. The default rating can then be adjusted slightly up or down for grade, which is calculated using grade modifiers or nonkey factors (functional history, physical examination, clinical studies).<sup>16</sup>

Dr. Fritz properly applied Table 16-4, page 512 of the A.M.A., *Guides* to determine impairment due to bursitis. According to the table, chronic trochanteric bursitis with a documented, chronically abnormal gait has a default impairment value of seven percent of the lower extremity. Because all applicable grade modifiers or nonkey factors were mild, there is no adjustment.

As the A.M.A., *Guides* applied the peripheral nerve rating process to develop its spinal nerve rating tables and as peripheral nerve impairment may be combined with diagnosis-based impairment at the lower extremity level,<sup>17</sup> Dr. Fritz properly combined appellant's 9 percent

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<sup>12</sup> FECA itself explicitly excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

<sup>13</sup> *E.g.*, *Timothy J. McGuire*, 34 ECAB 189 (1982).

<sup>14</sup> *Rozella L. Skinner*, 37 ECAB 398 (1986).

<sup>15</sup> According to the A.M.A., *Guides* approach, sensory and motor impairments are combined. *The Guides Newsletter*, page 3.

<sup>16</sup> *Id.* at 497.

<sup>17</sup> *Id.* at 531.

impairment of the right lower extremity due to L5 spinal nerve root impairment with her 7 percent diagnosis-based impairment due to bursitis, for a total right lower extremity impairment of 15 percent under the Combined Values Chart.

Accordingly, the Board finds that appellant has no more than a 1 percent impairment of her left leg or 15 percent impairment of her right leg. The Board will therefore affirm OWCP's December 12, 2013 schedule award decision.

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.

### **LEGAL PRECEDENT -- ISSUE 2**

When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account relevant factor so as to minimize any hardship.<sup>18</sup>

If compensation is owed to the debtor, the debt should be recovered from compensation due.<sup>19</sup>

### **ANALYSIS -- ISSUE 2**

The Board has no jurisdiction to review OWCP's June 4, 2013 final overpayment decision, which found that appellant received an overpayment of \$7,425.40. Any notice of appeal must be filed within 180 days from the date of issuance of an OWCP decision.<sup>20</sup> As more than 180 days elapsed from the date of OWCP's final overpayment decision to filing of this appeal on March 20, 2014, the Board may not review that decision. Accordingly, the Board has no authority to review the correctness of the debt. The Board also has no authority to review any administrative matters regarding her election of benefits.<sup>21</sup>

The Board does have jurisdiction to review OWCP's December 12, 2013 schedule award decision. The Board may decide whether OWCP properly collected appellant's debt from the award. The rule is clear: If compensation is owed to the debtor, the debt should be recovered from compensation due. Indeed, the implementing regulations required OWCP to recover the debt by decreasing compensation due under the schedule award.

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<sup>18</sup> 20 C.F.R. § 10.441(a).

<sup>19</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.300.8 (May 2004) (recovery from continuing entitlement).

<sup>20</sup> 20 C.F.R. § 501.3(e).

<sup>21</sup> The Board's jurisdiction is limited to reviewing final decisions of OWCP in cases arising under FECA. 20 C.F.R. § 501.2(c).

The circumstances of this case are similar to those in the case of *C.C.*<sup>22</sup> OWCP found that the claimant received an overpayment of \$3,023.61 because he had returned to work and continued to receive wage-loss compensation. The Board explained that it did not have jurisdiction over OWCP's overpayment decision. Rather, the issue was whether OWCP properly recovered the debt owed from the claimant's schedule award. Because OWCP may deduct an overpayment in full if the claimant is owed a sufficient large lump-sum payment, the Board found that OWCP properly deducted the \$3,023.61 from the claimant's \$45,331.08 schedule award.

As there was no evidence that deducting \$7,425.40 from a \$39,375.36 schedule award would cause any hardship, it left appellant with a net award of over \$30,000.00, the Board finds that OWCP properly recovered the debt from her schedule award.<sup>23</sup>

### **CONCLUSION**

The Board finds that appellant has no more than a 1 percent impairment of her left lower extremity and no more than a 15 percent impairment of her right. The Board also finds that OWCP properly recovered an outstanding debt from her schedule award.

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<sup>22</sup> Docket No. 12-1861 (issued April 24, 2013).

<sup>23</sup> See 20 C.F.R. § 10.441 (OWCP should attempt to minimize financial hardship when recovering an overpayment from future compensation).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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