

thoracic sprain and occipital contusion. On August 27, 1996 appellant filed a claim for benefits after she sustained a twisting injury to her back. OWCP accepted the claim for parathoracic muscle strain. On July 2, 1998 appellant filed a Form CA-2a claim for benefits, alleging that she sustained a recurrence of disability causally related to her accepted conditions. OWCP accepted the claim for exacerbation of cervical, thoracic and lumbar myofascitis and aggravation of degenerative disc disease of the lumbar spine.

On December 20, 2011 appellant filed a Form CA-7 claim for schedule award based on a partial loss of use of her lower and upper extremities.

In a report dated January 27, 2012, Dr. William N. Grant, Board-certified in internal medicine, stated that appellant had a 26 percent total impairment of her bilateral lower extremity based on her accepted lumbar and thoracic conditions, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). He advised that she was having constant painful paresthesia in her lower back which radiated down both of her lower limbs and that she needed assistance in performing multiple activities of daily living. Dr. Grant noted that appellant underwent a magnetic resonance imaging (MRI) scan in May 2011 that showed a herniated disc at L3-4. He calculated his impairment rating by finding that she had a grade modifier one for clinical studies “based on Table 1, page 5 of the attached handout;” a grade modifier of two for functional history under Table 16-6, page 516 of the A.M.A., *Guides*; and a grade modifier of two under Table 16-7, page 517 of the A.M.A., *Guides*. Using the net adjustment formula set forth at Section 16.4 of the A.M.A., *Guides*, Dr. Grant found that his calculations above produced a net adjustment of two, which yielded a severe sensory deficit of 4 percent and a moderate motor deficit of 10 percent, which produced a total deficit of 14 percent for left lower limb and 14 percent for the right lower limb. This yielded a bilateral lower limb impairment of 26 percent.

In a March 22, 2012 report, Dr. Nabil F. Angley, Board-certified in orthopedic surgery and an OWCP medical adviser, stated that he was unable to provide an impairment rating under the A.M.A., *Guides* based on Dr. Grant’s January 27, 2012 report. He asserted that Dr. Grant’s report contained exaggerated and inaccurate information and was not rendered in conformance with the appropriate tables and protocols of the A.M.A., *Guides*; accordingly, he recommended that appellant be referred to a new specialist for a new examination and impairment evaluation.

In order to determine whether appellant had any permanent impairment stemming from her accepted cervical, thoracic and lumbar conditions, OWCP referred the case to Dr. Manhal Ghanma, Board-certified in orthopedic surgery. In a March 8, 2013 report, Dr. Ghanma found that appellant had a zero percent permanent partial impairment of the upper and lower extremities pursuant to the A.M.A., *Guides*. After reviewing the medical history and statement of accepted facts and stating findings on examination, he opined that the record indicated that she did not develop any radiculopathy as a result of her work injuries, as evidenced by the multiple records presented in her medical file. Dr. Ghanma advised that the imaging studies did not reveal any evidence of nerve root compression to support radiculopathy based on appellant’s work injuries. He stated that, while she had continued complaints of global left leg and foot numbness, these symptoms were attributable to nonaccepted conditions and not to her work injuries. Dr. Ghanma opined that the objective evidence in the file did not support evidence of radiculopathy either in the upper or the lower extremities to support an impairment rating. In

light of the lack of objective evidence to support radiculopathy, with appellant's imaging studies revealing no evidence of nerve root compression, there was no basis for an impairment rating or schedule award for her upper and lower extremities based on the diagnosis of radiculopathy. Dr. Ghanma further advised that none of her accepted conditions would have resulted in radiculopathy, including cervical sprain, thoracic sprain, occipital contusion, parathoracic muscle strain, cervical, thoracic and lumbar myofascitis or aggravation of degenerative disc disease of the lumbar spine. Accordingly, he rated a zero percent impairment for both the upper and both lower extremities.

In a May 13, 2013 report, Dr. Brian M. Tonne, a specialist in internal medicine and an OWCP medical adviser, reviewed Dr. Ghanma's March 8, 2013 report and advised that spinal nerve root impairments which affected the extremities had been clarified in the July/August 2009 edition of *The Guides Newsletter*. He concurred with Dr. Ghanma's impairment evaluation, noting that appellant had no residual objective findings of upper or lower extremity motor weakness or sensory loss that were corroborated by focal examination findings consistent with MRI scan findings of radiculopathy. Dr. Tonne opined that, as there were no imaging findings of radiculopathy to support an impairment rating according to the A.M.A., *Guides*, appellant had no residual, ratable impairment.

By decision dated June 17, 2013, OWCP denied appellant's request for a schedule award, finding that she did not sustain any permanent impairment to a scheduled member of her body causally related to her accepted cervical, thoracic or lumbar conditions.

On June 20, 2013 appellant, through her attorney, requested an oral hearing, which was held on August 13, 2013. By decision dated February 6, 2014, an OWCP hearing representative affirmed the June 17, 2013 decision.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ 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. 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* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁵

² *Id.* at § 8107.

³ 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

⁴ *Id.*

⁵ *Veronica Williams*, 56 ECAB 367, 370 (2005).

ANALYSIS

OWCP accepted the conditions of exacerbation of thoracic sprain, occipital contusion, parathoracic muscle strain, cervical, thoracic and lumbar myofascitis and aggravation of degenerative disc disease of the lumbar spine. Dr. Tonne reviewed Dr. Ghanma's March 8, 2013 report and properly found that appellant had a zero percent impairment of her upper and lower extremities based on her accepted conditions.

On appeal, counsel argued that OWCP's methodology amounts to "junk science." The Board notes, however, that the A.M.A., *Guides* have been adopted as the uniform standard applicable to all claimants for the determination of permanent impairment under FECA.⁶ With regards to peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP procedures indicate that *The Guides Newsletter* "Rating Spinal Nerve Extremity Impairment using the sixth edition" (July/August 2009) is to be applied.⁷ The Board notes that an impairment rating can be issued based on findings of radiculopathy pursuant to the July/August 2009 edition of *The Guides Newsletter*. Dr. Ghanma, after reviewing appellant's medical history and conducting a thorough examination, found that none of the imaging studies in the record showed any evidence of nerve root compression to support radiculopathy based on her accepted conditions. He advised that, although she had continued complaints of global left leg and foot numbness, these symptoms were attributable to nonaccepted conditions. Given this lack of objective evidence to support radiculopathy, Dr. Ghanma concluded that there was no basis for an impairment rating for the upper and lower extremities. He concluded that appellant had a zero percent impairment for both the upper and both lower extremities. Dr. Tonne, an OWCP medical adviser, reviewed Dr. Ghanma's March 8, 2013 report and concurred that there was no basis for a schedule award.

The Board notes that Dr. Ghanma's March 8, 2013 impairment rating was rendered in conformance with the sixth edition of the A.M.A., *Guides*. Accordingly, as Dr. Ghanma and OWCP's medical adviser provided the only impairment ratings of record rendered in accordance with the applicable protocols and tables of the A.M.A., *Guides*, OWCP properly denied a schedule award in its June 17, 2013 decision. Accordingly, the Board will affirm the February 6, 2014 decision of OWCP, which affirmed the June 17, 2013 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.

⁶ See *J.C.*, Docket No. 11-241 (issued September 22, 2011); *M.R.*, Docket No. 11-84 (issued September 21, 2011).

⁷ See *G.N.*, Docket No. 10-850 (issued November 12, 2010); see also Federal (FECA) Procedure Manual, Part 3 -- *Medical, Schedule Awards*, Chapter 3.700, Exhibit 1, *supra* note 13.

CONCLUSION

The Board finds that appellant has not sustained any permanent impairment to a scheduled member of her body causally related to her accepted cervical, thoracic and lumbar conditions, thereby entitling him to a schedule award under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2014
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