

L5-S1.² On August 6, 1996 appellant underwent facet nerve denervation surgery at L4-S1. He worked in a light-duty position and then filed a claim for a recurrence of disability as of April 5, 2010. OWCP denied the claim. The Board reviewed a July 18, 2013 OWCP decision that denied merit review of the claim.³

On December 9, 2011 appellant submitted a claim for a schedule award. By letter dated December 19, 2011, OWCP advised him that there was no schedule award for the back itself, but an award could be paid for permanent impairment to the extremities. It notified appellant that *The Guides Newsletter* (July/August 2009) a supplemental publication of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) was used to rate impairments to the extremities from spinal nerve injuries. Appellant submitted medical evidence in 2013, but it did not address the issue of permanent impairment.

On April 24, 2013 OWCP referred appellant, medical records, and a statement of accepted facts to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon. In a report dated May 18, 2013, Dr. Obianwu reviewed a history of medical treatment and provided results on examination. He diagnosed chronic multilevel lumbar degenerative disc disease and mild central canal stenosis at L3-L5. Dr. Obianwu stated, “There is no involvement of the lower extremities in this gentleman. In this gentleman, there were no findings that would even allow for the terminology of radiculopathy. No weakness of any of the muscle groups in the lower extremities is noted. No reflex changes that would reflect some nerve root involvement are noted. There is not an iota of clinical evidence that would suggest spinal nerve impairment with involvement of the lower extremities. Therefore, at this time, calculation of an impairment rating is not feasible.”

In a report dated June 28, 2013, Dr. Obianwu indicated that he had reviewed a June 14, 2013 nerve conduction report. He stated that the studies were negative for bilateral lumbosacral radiculitis or neuropathy. Dr. Obianwu concluded, “Therefore, both clinically and by electrodiagnostic studies, no impairment of the lower extremities in this man are attributable to his spinal condition.”

OWCP referred the case to Dr. Morley Slutsky, an OWCP medical adviser, for review. In a report dated July 28, 2013, Dr. Slutsky opined that there was no basis for an impairment rating under *The Guides Newsletter*. He noted that there was no evidence of any sensory or motor deficit to either lower extremity.

By decision dated August 15, 2013, OWCP determined that appellant was not entitled to a schedule award. It found that the weight of the medical evidence did not establish any employment-related permanent impairment to a scheduled member of the body.

² An August 26, 1996 letter identified the accepted condition as a temporary aggravation. The statement of accepted facts prepared on April 24, 2013 describes the accepted condition as an aggravation of herniated lumbar discs at L4-5 and L5-S1.

³ Docket No. 13-2080 (issued February 6, 2014).

Appellant requested a hearing before an OWCP hearing representative, which was held on February 10, 2014. At the hearing, appellant's representative argued that *The Guides Newsletter* had no scientific basis. Appellant also argued that there were clinical findings that did show impairment. No additional medical evidence was submitted.

In a decision dated April 9, 2014, the hearing representative affirmed the August 15, 2013 decision. The hearing representative found the medical evidence did not establish a ratable permanent impairment to a scheduled member of the body.

LEGAL PRECEDENT

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁴ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁶ For 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

To be of probative value, the opinion of the physician must be based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the opinion. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

OWCP accepted an aggravation of herniated lumbar discs at L4-5 and L5-S1. Appellant seeks a schedule award under 5 U.S.C. § 8107. It is well established that neither FECA nor its regulations provide for a schedule award for impairment to the back, spine or to the body as a

⁴ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁵ *A. George Lampo*, 45 ECAB 441 (1994).

⁶ FECA Bulletin No. 09-03 (issued March 15, 2009).

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 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

⁸ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

whole.⁹ The issue is whether the medical evidence establishes any permanent impairment to his legs based on the accepted lumbar condition.

OWCP referred appellant to Dr. Obianwu for examination and an opinion with respect to a permanent impairment. Dr. Obianwu provided a complete report with results on examination. He found that appellant did not have any permanent impairment to the legs, and he explained his opinion. Dr. Obianwu found no clinical evidence of any radiculopathy, weakness or reflex changes. There were no sensory or motor deficits on examination. Dr. Obianwu provided an unequivocal opinion that there was no clinical evidence that would suggest spinal nerve impairment with involvement of the lower extremities. He also reviewed an electrodiagnostic study dated June 14, 2013 and advised that it did not support radiculitis or neuropathy.

With respect to a spinal nerve injury affecting the legs, the impairment would be determined in accordance with *The Guides Newsletter*. Appellant argued that *The Guides Newsletter* has no scientific basis and should not be used to evaluate a permanent impairment in this case. However, the Board has addressed this argument regarding *The Guides Newsletter* in prior cases. As the Board explained in *J.S.*, OWCP has discretion to adopt and utilize various editions of the A.M.A., *Guides* for assessing permanent impairment.¹⁰ OWCP has adopted the sixth edition for rating impairment of the upper or lower extremities caused by a spinal injury, as provided in section 3.700 of its procedures,¹¹ which memorializes proposed tables outlined in *The Guides Newsletter* (July/August 2009). The Board has recognized OWCP's adoption as a proper exercise of discretion in order to provide a uniform standard applicable to each claimant for a schedule award.¹²

The second opinion physician's report was referred to an OWCP medical adviser for review, in accordance with OWCP procedures.¹³ Dr. Slutsky concurred in a July 29, 2013 report that no impairment under *The Guides Newsletter* was established.

The Board finds the weight of the medical evidence of record does not establish an employment-related permanent impairment to appellant's legs based on the accepted lumbar condition. OWCP properly determined he was not entitled to a schedule award under 5 U.S.C. § 8107.

Appellant may request a schedule award at any time before OWCP based on new medical evidence with respect to an employment-related permanent impairment.

⁹ See *James E. Jenkins*, 39 ECAB 860 (1988); 5 U.S.C. § 8101(20).

¹⁰ Docket No. 14-920 (issued August 19, 2014).

¹¹ *Supra* note 7.

¹² *Id.* See also *D.W.*, Docket No. 14-428 (issued June 17, 2014).

¹³ *Supra* note 7 at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (February 2013).

CONCLUSION

The Board finds that appellant has not established an employment-related permanent impairment based on his accepted lumbar condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 9, 2014 is affirmed.

Issued: November 25, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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