

OWCP accepted sprains of the neck, thoracic spine, right elbow, wrist and forearm and lumbar intervertebral disc displacement.

Appellant submitted a claim for compensation (CA-7) on April 12, 2012 indicating he was claiming a schedule award. In a report dated April 2, 2012, Dr. Mark Netherton, a Board-certified anesthesiologist, opined that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had a 31 percent whole body impairment based on lumbar radiculopathy and chronic pain syndrome.

In an addendum report dated April 18, 2012, Dr. Netherton stated that, based on the sixth edition of the A.M.A., *Guides*, appellant had a 20 percent lower extremity impairment. Dr. Netherton assigned a class II impairment of the lower extremities after lumbar surgery and mild sensory and motor deficits from the L4-5 nerve root. By report dated May 16, 2012, an OWCP medical adviser opined that appellant did not have a ratable permanent impairment to either lower extremity. The medical adviser stated there was no objective evidence to support motor or sensory deficit.

By decision dated May 21, 2012, OWCP determined that appellant was not entitled to a schedule award. It found the medical evidence did not establish entitlement to a schedule award.

In a letter dated August 15, 2013, appellant's representative found that the April 18, 2012 report from Dr. Netherton did provide an opinion under the sixth edition of the A.M.A., *Guides*. Appellant inquired as to why this evidence was not sufficient to establish the claim for a schedule award.

By report dated August 21, 2013, an OWCP medical adviser opined there was no evidence of a lower extremity impairment. The medical adviser indicated that *The Guides Newsletter* must be used to determine a nerve impairment.

By decision dated September 6, 2013, OWCP stated that the report of Dr. Netherton "was reviewed and an impairment rating was assessed." It indicated that the report of the medical adviser was enclosed.

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.² 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

² 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).

adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁴

ANALYSIS

In the present case, appellant had requested reconsideration of the May 21, 2012 OWCP decision determining that appellant was not entitled to a schedule award based on the medical evidence.⁵ She noted that Dr. Netherton had provided an opinion in his April 18, 2012 report under the sixth edition of the A.M.A., *Guides*. The September 6, 2013 decision does not make any findings on the issues presented. It stated only that “the report” of Dr. Netherton was reviewed and a copy of an OWCP medical adviser’s report was enclosed.

It is a well-established principle that OWCP must make findings of fact and offer a statement of reasons in its final decisions.⁶ The September 6, 2013 decision does not make findings of fact or offer a statement of reasons. The decision appears to make a determination that the medical evidence is not sufficient to establish a schedule award, without discussing the medical evidence. If OWCP is finding that the weight of the evidence is represented by a report or reports of OWCP medical advisers, then it should discuss the reports and explain its finding that appellant is not entitled to a schedule award in this case. Dr. Netherton in his April 18, 2012 report found that appellant had a nerve root injury at the L4-5 level which caused sensory and motor deficits and lower extremity impairment, pursuant to the A.M.A., *Guides*. OWCP has not explained why this evidence is not sufficient to support a schedule award.

The case will be remanded to OWCP for a proper decision with findings of fact and a statement of reasons with respect to the issue presented. After such development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds the case is not in posture for decision and is remanded to OWCP to issue a proper decision in accord with its regulations and Board precedent.

³ *A. George Lampo*, 45 ECAB 441 (1994).

⁴ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁵ Even if the term reconsideration is not used, a written letter may properly be considered an application for reconsideration. *See R.C.*, Docket No. 13-450 (issued April 26, 2013).

⁶ *Z.B.*, Docket No. 12-1164 (issued December 14, 2012); *Arietta K. Cooper*, 5 ECAB 11 (1952); 20 C.F.R. § 10.126.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 6, 2013 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 16, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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