

chair. Dr. Mark A. Goldstein, an osteopath, diagnosed lumbar strain and somatic dysfunction of the sacroiliac joint on December 4 and 5, 2007 and January 16, 2008. He noted that appellant's back pain was not radiating, but that she experienced occasional right leg weakness.

Appellant filed a notice of recurrence of disability on March 11, 2008 alleging on March 7, 2008 her pain increased after transferring a patient and that lifting a heavy item increased her pain. OWCP accepted her claims for lumbar sprain/strain.

In notes dated February 8 and 22, 2008, Dr. Goldstein diagnosed piriformis muscle spasm, somatic dysfunction of the sacroiliac joint and lumbar strain. He noted on February 22, 2008 that appellant's lumbar radiculopathy had resolved. Dr. Goldstein found that she ambulated with stiffness with minimal tenderness of the right sacroiliac joint and mild spasm of the piriformis muscles. In February 2008, appellant underwent a lumbar magnetic resonance imaging (MRI) scan which demonstrated a small L4-5 disc protrusion with an annular tear of uncertain age and no nerve compression. In a note dated April 4, 2008, Dr. Goldstein stated that she had reached maximum medical improvement. He found that appellant piriformis muscle spasm had resolved as had her lumbar radiculopathy. Dr. Goldstein also diagnosed lumbar strain and somatic dysfunction of the sacroiliac joint. He indicated that appellant could not lift over 25 pounds.

Appellant requested a schedule award on August 5, 2008. In a letter dated February 21, 2013, OWCP noted that she had requested a schedule award and that she had not submitted medical evidence of a permanent impairment due to her accepted lumbar sprain. It requested additional medical evidence supporting a permanent impairment and allowed appellant 60 days to submit this evidence. Appellant did not respond within the allotted time.

By decision dated November 18, 2013, OWCP denied appellant's claim for a schedule award finding that she had not submitted medical evidence of a permanent impairment of a scheduled member under FECA.

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 for loss or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of

² *Id.* at §§ 8101-8193, 8107.

³ 20 C.F.R. § 10.404.

the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴

No schedule award is payable for a member, function or organ of the body not specified in FECA or in the regulations.⁵ Because neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine,⁶ no claimant is entitled to such an award.⁷ The Board notes that section 8101(19) specifically excludes the back from the definition of organ.⁸ A claimant may, however, receive a schedule award for any permanent impairment to the upper or lower extremities even though the cause of the impairment originated in the spine.⁹

ANALYSIS

OWCP accepted appellant's claim for lumbar sprain. Appellant then filed a claim for a schedule award. OWCP denied this claim on the grounds that she had submitted no evidence of permanent impairment to a scheduled member.

The medical evidence consists of a series of reports from Dr. Goldstein addressing appellant's lumbar sprain and other back conditions. Dr. Goldstein indicated that appellant had radiculopathy which had resolved. He did not report any condition in either her upper or lower extremities. As the only condition diagnosed and accepted involved appellant's lumbar spine with no suggestion of impairment to her upper or lower extremities, she has not supported that her employment injuries resulted in permanent impairment of a scheduled member. There is no impairment rating for the spine under FECA and no medical evidence in conformance with FECA and the A.M.A., *Guides* to establish permanent impairment. The Board finds that appellant has not met her burden of proof in establishing entitlement to 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 to a scheduled member.

⁴ For new decisions issued after May 1, 2009, OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6th ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁵ *W.D.*, Docket No. 10-274 (issued September 3, 2010); *William Edwin Muir*, 27 ECAB 579 (1976).

⁶ FECA itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

⁷ *Timothy J. McGuire*, 34 ECAB 189 (1982).

⁸ 5 U.S.C. § 8101(19); *T.J.*, Docket No. 14-556 (issued July 7, 2014).

⁹ *Id.*

CONCLUSION

The Board finds that appellant has not submitted medical evidence that she sustained a permanent impairment of a scheduled member under FECA. Thus, appellant is not entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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