

left hip, and left ankle.² It paid appellant compensation for total disability from September 22, 2012 to February 8, 2013. On February 11, 2013 appellant returned to her regular employment.

In a report dated July 17, 2012, Dr. Jonathan Dunn, a Board-certified orthopedic surgeon, noted that appellant had “no gross abnormalities” of the left hip but some discomfort with movement and tenderness to palpation of the greater trochanter of the left hip, the sacroiliac joints bilaterally, and the thoracolumbar paraspinal muscles. On October 15, 2012 he discussed her complaints of persistent pain in her back after a July 12, 2012 motor vehicle accident. Dr. Dunn indicated that appellant informed him that her “ankle now feels fine.”

A magnetic resonance imaging (MRI) scan study of the lumbar spine dated September 13, 2012 revealed “[m]inimal broad-based disc bulges at L4-5 and L5-S1 but no significant spinal canal or neural foraminal stenosis.” Electrodiagnostic studies performed on September 14, 2012 were normal.

In a progress report dated October 11, 2013, Dr. Bernita C. Taylor, Board-certified in family practice, opined that appellant had reached maximum medical improvement following a July 12, 2012 work injury. She discharged appellant from care.

On November 13, 2013 appellant filed a claim for a schedule award.

By letter dated November 21, 2013, OWCP requested that appellant submit an impairment evaluation from her attending physician in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*).

In a decision dated January 7, 2014, OWCP denied appellant’s claim. It noted that she had not responded to its request for an impairment evaluation.

An impairment evaluation, dated January 4, 2014, was received by OWCP on January 30, 2014. Dr. Stuart J. Goodman, a Board-certified neurologist, discussed appellant’s history of a motor vehicle accident on July 12, 2012 and current complaints of low back pain with occasional radiation down her left side and gluteal pain on the left into the left lateral thigh. On examination, he found a positive straight leg raise, equal motor strength, and intact sensation. Dr. Goodman diagnosed a pelvic and lumbosacral strain due to the July 12, 2012 motor vehicle accident and chronic low grade pain syndrome. Citing Chapter 17 of the A.M.A., *Guides*, relevant to determining impairments of the spine and pelvis, he found that appellant had a class 1 impairment of the lumbar spine, which he converted to a 10 percent left lower extremity impairment.

On July 18, 2014 appellant, through her attorney, requested reconsideration.

On September 15, 2014 an OWCP medical adviser, Dr. Morley Slutsky, reviewed Dr. Goodman’s report and concluded that appellant failed to establish a permanent impairment of

² By decision dated September 7, 2012, OWCP denied appellant’s claim finding the medical evidence insufficient to establish a medical condition causally related to the accepted July 12, 2012 work incident. In a decision dated October 23, 2012, an OWCP hearing representative reversed the September 7, 2012 decision and accepted the claim for thoracic sprain/strain, lumbar sprain/strain, left ankle sprain/strain, and left hip sprain/strain.

the left lower extremity. He noted that Dr. Goodman used Chapter 17 of the A.M.A., *Guides* rather than *The Guides Newsletter, Rating Spinal Nerve Impairment Using the Sixth Edition* (July/August 2009) in evaluating her lower extremity impairment.³ Dr. Slutsky explained that OWCP does not use Chapter 17 to evaluate back injuries; rather he noted the proper method to rate lumbar injuries were *The Guides Newsletter*. He noted that an MRI scan study showed no stenosis or involvement of a nerve root, that electrodiagnostic studies were normal, and that lumbar and thoracic sprains did not cause permanent sensory or motor impairments of the lower extremities. Dr. Slutsky determined that, according to *The Guides Newsletter*, appellant did not have a left lower extremity impairment arising from the lumbar spine. He further determined that Dr. Goodman did not find an impairment of the left ankle or left hip. Dr. Slutsky noted that on October 1, 2012 appellant informed a physician that her left ankle felt fine and on July 17, 2012 a physician found no gross abnormalities on examination of the left hip.

By decision dated October 3, 2014, OWCP denied modification of its January 7, 2014 decision.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing federal regulations⁵ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures indicate that it should apply *The Guides Newsletter, Rating Spinal Nerve Impairment Using the Sixth Edition* (July/August 2009).⁸

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1, note 5 (January 2010). *The Guides Newsletter* (July/August 2009) is included as Exhibit 4.

⁴ *Supra* note 1 at § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Federal (FECA) Procedure Manual, *supra* note 3.

⁸ *See G.N.*, Docket No. 10-850 (issued November 12, 2010); *see also supra* note 3.

ANALYSIS

OWCP accepted appellant's claim for strains/sprains of the thoracic and lumbar spine, left hip, and left ankle. On October 11, 2013 Dr. Taylor advised that she had obtained maximum medical improvement and released her from care. On November 13, 2013 appellant filed a schedule award claim.

The Board finds that the evidence is insufficient to establish that under the sixth edition of the A.M.A., *Guides* appellant sustained a permanent impairment of the left leg. Appellant submitted a report dated January 4, 2014 from Dr. Goodman, who found that she had a 10 percent left lower extremity impairment. Dr. Goodman did not, however, follow the A.M.A., *Guides* in rating her permanent impairment. He diagnosed lumbosacral and pelvic strains due to appellant's July 12, 2012 employment injury and provided findings on examination of a positive straight leg raise, equal motor strength, and intact sensation. Dr. Goodman applied Chapter 17 of the A.M.A., *Guides*, and concluded that she had a class 1 impairment of the lumbar spine or a 10 percent left lower extremity impairment. OWCP's procedures, however, provide that *The Guides Newsletter* is the appropriate method of rating upper and lower extremity impairments originating in the spine.⁹ Dr. Goodman did not discuss *The Guides Newsletter*. He calculated a schedule award based on an impairment rating for the back but FECA does not provide schedule awards for an impairment of the back or spine.¹⁰ As Dr. Goodman did not rate appellant's impairment in accordance with the standards adopted by OWCP, his opinion is of little probative value.¹¹

OWCP medical adviser reviewed Dr. Goodman's findings and explained that he should not have used Chapter 17 to find the lower extremity rating. He further determined that Dr. Goodman did not find any impairment due to a left hip or left ankle condition. The medical adviser found that Dr. Goodman's impairment evaluation did not conform to OWCP protocols and concluded that the medical evidence did not show an impairment of the left lower extremity. Appellant had not submitted any other medical evidence supporting permanent impairment under the sixth edition of the A.M.A., *Guides* for a scheduled member of the body under FECA.

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.

CONCLUSION

The Board finds that appellant has not established permanent impairment of the left lower extremity.

⁹ *Id.*

¹⁰ *Supra* note 1 at § 8101(19); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

¹¹ *See L.G.*, Docket No. 14-1786 (issued December 10, 2014); *James Kennedy, Jr.*, 40 ECAB 620 (1989) (finding that an opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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