

FACTUAL HISTORY

On April 22, 2004 appellant was a 53-year-old maintenance mechanic. On that date he filed a traumatic injury claim (Form CA-1) alleging that he sustained a back injury in the performance of duty on April 19, 2004. Appellant reported that he was on a conveyor belt lifting a table when the belt began to move, causing him to twist and strain his back. OWCP accepted the claim for a lumbar strain and temporary aggravation of lumbar spondylosis. Appellant returned to work in a part-time modified position and received intermittent wage-loss compensation.

Appellant received treatment from Dr. Rommel Childress, a Board-certified orthopedic surgeon. In a report dated November 15, 2011, Dr. Childress stated that appellant was then working two days per week, primarily performing office duties. He stated that appellant had L5 and S1 radicular problems, with episodes of his legs feeling weak. Dr. Childress indicated that appellant was considering disability retirement.

OWCP requested that a medical adviser provide an opinion as to any permanent impairment to a scheduled member of the body. In a report dated December 23, 2011, the medical adviser stated that a May 28, 2008 nerve conduction study (NCS) showed an S1 radiculopathy with normal motor function. He opined that under the July/August 2009 edition of *The Guides Newsletter*, appellant had one percent impairment to each leg.

Dr. Childress responded on February 2, 2012 that he disagreed with the medical adviser and would send a detailed report. In a report dated May 5, 2014, he opined that appellant had nine percent permanent impairment to each leg under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter the A.M.A., *Guides*). Dr. Childress stated that appellant had a documented S1 radiculopathy, and the impairment was based on motor and sensory deficits.

OWCP referred the report of Dr. Childress to an OWCP medical adviser for review. By report dated June 11, 2014, the medical adviser noted the prior December 23, 2011 report. He indicated that there had been no change from the May 28, 2008 study and opined that appellant had one percent permanent impairment to each leg.

In a report dated October 30, 2014, Dr. Childress responded and explained that he had used Table 16-12 of the A.M.A., *Guides* to find that appellant had nine percent bilateral leg impairment. He stated that he had placed appellant in class 2 for the sciatic nerve.

The case was again reviewed by an OWCP medical adviser. In a report dated November 21, 2014, the medical adviser stated that a peripheral nerve impairment of a spinal nerve is properly determined under *The Guides Newsletter*. The medical adviser noted electromyogram (EMG) studies from 2011³ and 2008 showed a bilateral S1 nerve root sensory deficit, and under Table 2 of *The Guides Newsletter* the impairment was 1 percent for class 1, grade E.

³ The record contains a September 1, 2011 EMG/NCS report from Dr. Hafiz Elahi, a Board-certified neurologist.

By decision dated December 3, 2014, OWCP issued a schedule award for one percent permanent impairment to each leg. The period of the award was 5.78 weeks from September 13, 2014.

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

Neither FECA nor its regulations provide for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of “organ” under FECA.⁷ The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter* offers an approach to rating spinal nerve impairments consistent with sixth edition methodology. 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.⁸ The tables in *The Guides Newsletter* follow the methodology used in the sixth edition of the A.M.A., *Guides*: identifying the spinal nerve, identifying the impairment class for the Class of Diagnosis (CDX), and then adjusting the default impairment (grade C) by grade modifiers based on Functional History (GMFH) and Clinical Studies (GMCS).⁹ The formula is (GMFH-CDX) + (GMCS-CDX).

ANALYSIS

In the present case, OWCP accepted that appellant sustained a lumbar strain and temporary aggravation of lumbar spondylosis. As noted above, FECA does not provide 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 (March 15, 2009).

⁷ See James E. Jenkins, 39 ECAB 860 (1988); 5 U.S.C. § 8101(20).

⁸ 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.

⁹ A.M.A., *Guides* 533 (lower extremities) and 430 (upper extremities). A grade modifier for physical examination is not used since the examination findings are used to determine the CDX. The net adjustment range is from grade A (-2) to grade E (+2).

schedule award for an impairment to the back itself. The issue is the degree of permanent impairment to the legs. Dr. Childress indicated that appellant had a bilateral S1 radiculopathy into both legs.

Although Dr. Childress has opined that appellant has nine percent permanent impairment to each leg, this opinion is of diminished probative value. He attempted to apply Table 16-12 of the A.M.A., *Guides* for the sciatic nerve. As noted above, it is well established that under FECA, an impairment from a spinal nerve affecting the lower extremities is properly determined under *The Guides Newsletter*.¹⁰ Dr. Childress did not provide an opinion as to permanent impairment using *The Guides Newsletter*.

The only medical reports of record that do apply *The Guides Newsletter* are the December 23, 2011, June 12 and November 21, 2014 reports from OWCP medical advisers. These reports find that under *The Guides Newsletter* the permanent impairment to each leg was one percent. The Board notes that under Table 2 for the S1 nerve the default (grade C) leg impairment for mild sensory deficit is one percent. The grade E impairment, after a net adjustment of +2, is also one percent.¹¹

There is no contrary medical evidence of record applying *The Guides Newsletter*. The Board accordingly finds that the weight of the medical evidence in this case supports the December 3, 2014 schedule award of one percent to each leg.

Appellant may submit new and relevant evidence and request an increased schedule award at any time with OWCP.

CONCLUSION

The Board finds that appellant has not established more than one percent permanent impairment to each leg.

¹⁰ See also A.C., Docket No. 15-307 (issued April 1, 2015).

¹¹ *The Guides Newsletter*, Table 2.

ORDER

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

Issued: August 11, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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