

slammed into the edge of the trailer that he had begun to unload. OWCP accepted the claim for lumbosacral joint sprain, temporary lumbar disc disease aggravation at L3-4 and temporary lumbar spondylosis aggravation without myelopathy.

On October 2, 2013 appellant filed a claim for a schedule award.

In a November 26, 2013 report, Dr. Emmanuel E. Jacob, an examining Board-certified physiatrist, conducted a physical examination for purposes of an impairment rating. He reviewed the medical and employment injury history and diagnosed L3-4 lumbar displacement, L3-4 lumbar interbody fusion and L4 right root lumbar radiculopathy. Using Table 16-11, page 533 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Jacob considered appellant's sensory and motor deficits for L4 nerve root and determined a severity of 1 or mild and placed into class 1. He then used Table 16-12, pages 534-35 to find a one percent sensory deficit and a five percent motor deficit. Using the net adjustment formula, Dr. Jacob assigned a grade modifier 1 for functional history, he found the physical examination grade modifier was not relevant, and assigned a grade modifier of 1 for clinical studies, which resulted in a final net adjustment of zero. As the next adjustment was zero, he found no change in impairment ratings. Dr. Jacob then combined the impairment sensory and motor impairment ratings for the L4, nerve root to find a total six percent right lower extremity impairment.

On March 5, 2014 an OWCP medical adviser reviewed the accepted conditions in Dr. Jacob's November 26, 2013 impairment rating report. On page two of the report, the medical adviser opined that appellant had a four percent right lower extremity impairment while on page six he concluded the permanent impairment to be six percent.

On June 5, 2014 OWCP requested clarification from the medical adviser as to whether appellant had four percent right lower extremity impairment or six percent right lower extremity impairment. No response was received.

By decision dated June 5, 2014, OWCP granted appellant a schedule award for a four percent permanent impairment of the right lower extremity.

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 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

appropriate standard for evaluating schedule losses.⁴ Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁵ The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁶

In addressing lower extremity impairments, the sixth edition requires identifying the impairment class for the Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁷

The schedule award provision of FECA⁸ and its implementing regulations⁹ 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.¹⁰ Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.¹¹ The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).¹²

In addressing lower extremity impairments, the sixth edition requires identifying the impairment class for the diagnosed condition, which is then adjusted by grade modifiers based

⁴ *Id.* See *C.M.*, Docket No. 09-1268 (issued January 22, 2010); *Billy B. Scoles*, 57 ECAB 258 (2005).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claim*, Chapter 2.808.6.6a (January 2010); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁶ A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

⁷ A.M.A., *Guides* 521. *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404.

¹⁰ *Id.* See *C.M.*, Docket No. 09-1268 (issued January 22, 2010); *Billy B. Scoles*, *supra* note 4.

¹¹ *Supra* note 5.

¹² A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

on GMFH, GMPE and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹³

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.¹⁴

ANALYSIS

The sixth edition of the A.M.A., *Guides* provide that lower extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula noted above.¹⁵ Appellant's accepted diagnosed conditions were lumbosacral joint sprain, temporary lumbar disc disease aggravation at L3-4 and temporary lumbar spondylosis aggravation without myelopathy. The Board finds that this case is not in posture for decision.

The evidence relevant to the impairment rating for appellant's right lower extremity included reports from Dr. Jacob and an OWCP medical adviser. Dr. Jacob concluded that appellant had a six percent right lower extremity impairment using Table 16-11, page 533 and Table 16-12, pages 534-35 to determine his sensory and motor deficits. The medical adviser reviewed Dr. Jacob's report and provided right lower extremity impairment ratings of four percent and six percent. OWCP requested clarification from the medical adviser, which it had not received when issuing the June 5, 2014 schedule award decision.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹⁶ While appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁷ Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.¹⁸ As it undertook development of the medical evidence by requesting clarification from the medical adviser regarding the extent and degree of right lower extremity impairment, it had an obligation to secure the report adequately addressing the relevant issue prior to issue a decision.¹⁹

¹³ *Supra* note 7.

¹⁴ *See supra* note 5 at Chapter 2.808.6(d) (January 2010). *See C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

¹⁵ *Supra* notes 8, 9.

¹⁶ *R.B.*, Docket No. 08-1662 (issued December 18, 2008); *A.A.*, 59 ECAB 726 (2008); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Vanessa Young*, 55 ECAB 575 (2004).

¹⁷ *D.N.*, 59 ECAB 576 (2008); *Richard E. Simpson*, 55 ECAB 490 (2004).

¹⁸ *See A.A.*, 59 ECAB 726 (2008); *Melvin James*, 55 ECAB 406 (2004).

¹⁹ *Id.*; *see also Peter C. Belkind*, 56 ECAB 580 (2005).

CONCLUSION

The Board finds that this case is not in posture for decision. The case is remanded for further evidentiary development, to be followed by the issuance of a *de novo* decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 5, 2014 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: February 13, 2015
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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