



## **FACTUAL HISTORY**

On January 15, 2008 appellant, then a 49-year-old Veterans' Affairs nurse, filed a traumatic injury claim alleging that on January 10, 2008 she sustained injuries to her hip and right ankle when she was struck by an engineering scooter as she crossed the pedestrian crosswalk. She stopped work. OWCP initially accepted appellant's claim for right ankle sprain, hip contusion, and contusion of the right ankle. It further expanded her claim to include incontinence of feces, other urinary incontinence, neurogenic bladder, neurogenic bowel, urinary frequency, and retention of urine. OWCP paid wage-loss and medical compensation benefits.

On May 18 and May 20, 2013 appellant, through counsel, requested a schedule award. She submitted a May 1, 2013 report by Dr. Robert A. Helsten, Board-certified in physical medicine and rehabilitation, who reviewed her history and accurately described the January 10, 2008 injuries. Dr. Helsten noted that a May 10, 2010 electromyography and nerve conduction study examination demonstrated prolonged left pudendal terminal motor latency and absent right pudendal. He related that anal manometric studies, rectal sensation studies, rectoanal inhibitory reflex, and puborectalis muscle fiber recruitment revealed an abnormal study with multiple dysfunctions noted. Upon examination of appellant's back and lower extremities, Dr. Helsten observed moderate lumbar tenderness, worse on the right extending into the right sacroiliac area. He found no tenderness to either hip or right ankle. Rectal examination demonstrated that appellant had no rectal tone even, when she tried to tighten her rectal muscles. Dr. Helsten reported diagnosed right ankle sprain, contusion of both hips and right ankle, incontinence of feces, neurogenic bladder, neurogenic bowel, urinary frequency, and urinary retention.

Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>2</sup>, Table 16-2, page 501, for right ankle sprain, and Table 16-4, page 512, for hip contusion, Dr. Helsten determined that appellant was class 0 due to no residual pain which resulted in no permanent impairment of the lower extremities.

Regarding appellant's diagnoses of incontinence of feces and a neurogenic bowel, Dr. Helsten utilized Table 16-6, page 116, and determined that she had a class 4 impairment due to frequent severe or occasional extreme symptoms or signs of anal disease. He noted grade modifiers of significant Functional History (GMFH) with frequent fecal incontinence and explained that her American Academy of Orthopedic Surgeons score was 56, which was comparable to an grade E modifier. Dr. Helsten stated that appellant's grade modifier for Physical Examination (GMPE) was significant for complete loss of sphincter tone, which equaled a 4 minus 4 or 1 grade modifier. He explained that he did not assign a grade modifier for Clinical Studies (GMCS) since they were used to make the diagnosis. Dr. Helsten calculated that appellant had a +1 grade modifier which changed her default grade C to a grade D for 28 percent whole person impairment.

For appellant's diagnosis of neurogenic bladder and retention of urine, Dr. Helsten utilized Table 7-4, page 139, and stated that she had default class 3 impairment or 25 percent with little or no voluntary control of micturition. He reported that she had grade modifiers of +2

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

for functional history and 0 for physical examination. Thus, Dr. Helsten determined that appellant had 29 percent whole percent impairment. He referred to the Combined Values Chart and calculated that she had 49 percent impairment of the combined whole person impairment for bowel and bladder dysfunction. Dr. Helsten stated that appellant reached maximum medical improvement on January 11, 2013.

On July 2, 2013 OWCP referred appellant's schedule award claim, along with the medical record and statement of accepted facts, to an OWCP medical adviser to determine whether she sustained any permanent impairment due to her January 10, 2008 employment injuries. In a September 9, 2013 report, Dr. Ronald Blum, a Board-certified orthopedic surgeon and the medical adviser, related that he reviewed the record, including the statement of accepted facts, and noted appellant's accepted conditions of right ankle sprain, hip and right ankle contusions, incontinence of feces, neurogenic bladder, neurogenic bowel, urinary frequency, and retention of urine. He reviewed Dr. Helsten's May 1, 2013 report and agreed that appellant had zero percent impairment of the bilateral lower extremities as the conditions of right ankle sprain/contusion and bilateral hip contusion had resolved. Regarding appellant's impairment based on abnormalities of the anus and bladder, Dr. Blum stated that anal disease (neurogenic bowel), bladder disease (neurogenic bladder) and whole person impairments were not considered scheduled members for purposes of determining schedule awards under OWCP regulations. Accordingly, he opined that he was unable to determine impairment for appellant's accepted conditions of anal disease, bladder disease, or whole person.

In an October 28, 2013 letter, counsel for appellant pointed out that 5 U.S.C. § 8107(22) provided that: "For permanent loss or loss of use of any other important external or internal organ of the body as determined by the Secretary, proper and equitable compensation ... for each organ so determined shall be paid in addition to any other compensation payable under this schedule." She contended that the bladder was certainly an "important internal organ" for which appellant sustained a permanent loss of function due to her January 10, 2008 employment injury. Furthermore, counsel alleged that a conflict in medical opinion existed between appellant's physician and the medical adviser, which required referral for an impartial medical examination in order to resolve the conflict regarding her impairment rating.

In a decision dated December 17, 2013, OWCP denied appellant's schedule award claim finding that the medical evidence was insufficient to establish that she sustained a permanent impairment to a scheduled member due to her accepted conditions as defined by FECA.

Following OWCP's December 17, 2013 decision, appellant submitted various vouchers requesting reimbursements for travel and medical appointments and resubmitted Dr. Helsten's May 1, 2013 report.

On September 17, 2014 counsel requested reconsideration. She contended that a detailed review of appellant's medical history demonstrated that appellant suffered far more conditions than reflected in her case file, most notably unspecified symptoms associated with female genital organs (ICD-9 Code 625.9) for the condition of pudendal nerve neuropathies. Counsel stated that if this code was properly included it would be the condition upon which to determine any permanent impairment according to the sixth edition of the A.M.A., *Guides*. She pointed out that appellant's treating physicians and the medical adviser, Dr. Blum, agreed that there was a causal

relationship between the January 10, 2008 employment injury and the development of pudendal nerve neuropathy which resulted in bowel and bladder malfunction. Counsel also cited 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(b), and Federal (FECA) Procedure Manual, Part 3 -- Medical, Schedule Awards, Chapter 3.700.4(d)(2) (January 2010) which stated that the list of scheduled members granted under FECA was expanded to include the “breast, kidney, larynx, lungs, penis, testicle, ovary, uterus/cervix, and vulva/vagina and skin.” She alleged that appellant’s case file established that she had a permanent impairment of a scheduled member covered under FECA, specifically unspecified symptoms associated with female genital organs.

Counsel further reported that the new medical evidence submitted demonstrated that appellant sustained bilateral pudendal neuropathies as a result of the January 10, 2008 employment injury, which caused the neurogenic bladder and neurogenic bowel conditions. She cited various cases where a federal employee was granted a schedule award due to permanent impairment to the female genital organ and bladder and contended that appellant should have, at least, been referred to a Board-certified urologist, for an impartial medical examination. Counsel concluded that the Board should grant a schedule award for permanent impairment as stated in Dr. Helsten’s May 1, 2013 schedule award report or, at least, her case should be referred to an impartial Board-certified urologist to determine her permanent impairment.

In a January 13, 2014 report, Dr. Mary E. Vanderlick, a neurologist, stated that appellant had bilateral pudendal neuropathies related to trauma with subsequent pelvic floor atrophy with bowel and bladder incontinence. She provided a detailed description of appellant’s extensive medical treatment for her urinary conditions. Dr. Vanderlick reported that despite appellant’s treatment she continued with significant disability including bladder and bowel incontinence and significant pain requiring narcotic medications. She also reported that appellant was not able to perform her duties as a registered nurse because bowel and bladder incontinence were unpredictable and would interfere with her ability to hold down a full-time job. Dr. Vanderlick diagnosed specified symptoms associated with female genital organs, neurogenic bladder, neurogenic bowel, and displacement of lumbar intervertebral disc without myelopathy. She noted that she did not expect appellant to make a full recovery and that her symptoms and disability would last at least a year, and throughout her lifetime. Dr. Vanderlick also noted that appellant was restricted in her ability to perform various physical abilities.

Dr. Vanderlick reported in a letter dated August 11, 2014, that appellant had a diagnosis of pudendal nerve neuropathy and that it fell under code 625.9 for “unspecified symptoms associated with female genital organs.” She explained that pudendal neuropathy for appellant did not mean pelvic floor pain but instead meant atrophy of the pelvic floor muscles. Dr. Vanderlick opined that appellant’s pudendal nerves were injured in a traumatic way when appellant was a pedestrian in a motor vehicle accident in the employing establishment’s parking lot.

In a September 11, 2014 report, Dr. Vanderlick examined appellant for follow-up regarding neuropathic pain, addendum neuropathy, neurogenic bowel, and bladder. She stated that appellant had bilateral pudendal neuropathies as a result of trauma with resultant pelvic floor atrophy and that this condition caused neurogenic bladder and neurogenic bowels. Dr. Vanderlick reviewed appellant’s medical treatment and provided findings on examination. She diagnosed unspecified symptoms associated with female genital organs, neurogenic bladder,

neurogenic bowel, displacement of lumbar intervertebral disc without myelopathy, disturbance of skin sensation -- paresthesia, numbness, tingling, hypoesthesia, carpal tunnel syndrome, and joint pain. Dr. Vanderlick stated that most of appellant's symptoms originated from the trauma she suffered several years ago resulting in bilateral pudendal neuropathy and pelvic floor atrophy.

By decision dated January 7, 2015, OWCP denied modification of the December 17, 2013 denial decision.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>3</sup> and its implementing regulations 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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound 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. The A.M.A., *Guides* has been adopted by OWCP as the appropriate standards for evaluating schedule losses.<sup>4</sup>

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.<sup>5</sup> Under the sixth edition, the evaluator identifies the impairment class for the Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE, and GMCS. The Net Adjustment Formula is  $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$ .<sup>6</sup> Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.<sup>7</sup>

No schedule award is payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.<sup>8</sup> FECA identifies members such as the arm, leg, hand, foot, thumb, finger, and toes. It also specifies loss of hearing and vision, the loss of an eye and serious disfigurement of the face, head, or neck.<sup>9</sup> Section 8107(c)(22) of FECA provides for the payment of compensation for permanent loss of any other important external or internal

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 20 C.F.R. § 10.404 (1999); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009), p. 3, section 1.3.

<sup>6</sup> *Id.* at 494-531.

<sup>7</sup> *See R.V.*, Docket No. 10-1827 (issued April 1, 2011).

<sup>8</sup> *See J.W.*, 59 ECAB 308 (2008); *Paul A. Zoltek*, 56 ECAB 325 (2005); *Leroy M. Terska*, 53 ECAB 247 (2001).

<sup>9</sup> 5 U.S.C. § 8107.

organ of the body as determined by the Secretary of Labor.<sup>10</sup> The Secretary of Labor has made such a determination, and pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix, vulva/vagina, and skin to the compensation schedule.<sup>11</sup> There is no statutory basis for payment of a schedule award for impairment to the bladder, colon, or rectum under FECA or in the regulations.<sup>12</sup>

### ANALYSIS

OWCP accepted that appellant sustained multiple injuries to her lower extremities and bladder as a result of the January 10, 2008 employment incident. Appellant filed a schedule award claim. In decisions dated December 17, 2013 and January 7, 2015, OWCP denied her schedule award claim finding that she failed to establish that she sustained a permanent impairment to a scheduled member under FECA.

Appellant submitted a May 1, 2013 report from Dr. Helsten, who observed no tenderness to either hip or right ankle upon physical examination. Dr. Helsten referenced Table 16-2, page 501, of the sixth edition of the A.M.A., *Guides*, for right ankle sprain and determined that she had zero percent impairment due to no residual pain. He noted that according to Table 16-4, page 512, appellant had zero percent impairment to her hips because she had no complaints of hip pain. Dr. Blum, an OWCP medical adviser, reviewed Dr. Helsten's May 1, 2013 report and agreed that appellant had no remaining symptoms of her right ankle sprain and contusion and bilateral hip contusions. He concluded that appellant had not sustained any permanent impairment from her accepted right ankle sprain and contusion and bilateral hip contusion. Based on the opinions of both appellant's treating physician and the medical adviser, the Board finds that appellant has not established a schedule award claim for bilateral lower extremities.

In the same report, Dr. Helsten referred to Table 7-4, page 139, for bladder disease and determined that appellant had 29 percent whole person impairment for neurogenic bladder and retention of urine. He used Table 6-6, page 116, and opined that she had 28 whole percent impairment for incontinence of feces and neurogenic bowel. Dr. Helsten applied the Combined Values Chart and concluded that appellant had combined 49 percent whole person impairment for bowel and bladder dysfunction.

Dr. Blum reviewed Dr. Helsten's May 1, 2013 report and also noted that, while Dr. Helsten's calculations might have been correct, but OWCP regulations provided a schedule award only for impairments to scheduled members of the body. He stated that anal disease (neurogenic bowel), bladder disease (neurogenic bladder) and "whole person" were not scheduled members under FECA. Accordingly, Dr. Blum concluded that he was unable to recommend any impairment for appellant based on an impairment of anal disease, bladder disease, or "whole person."

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<sup>10</sup> *Id.* at § 8122(c)(22).

<sup>11</sup> 20 C.F.R. § 10.404(a); *Marilyn S. Freeland*, 57 ECAB 607 (2006).

<sup>12</sup> *Supra* note 9; *D.J.*, Docket No. 11-1359 (issued February 24, 2012).

As previously stated neither FECA nor OWCP's implementing regulations provide for a schedule award for the bladder or the bowel.<sup>13</sup> A schedule award is not payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.<sup>14</sup> FECA does not allow OWCP to add organs or functions to the compensation schedule on a case-by-case basis and the Board lacks authority to enlarge the provisions of the statute or regulations.<sup>15</sup> The Board finds, therefore, that appellant is not entitled to a schedule award for permanent impairment to the bowel or bladder.<sup>16</sup>

On appeal, counsel argued that Dr. Helsten's reports did meet the requirements for a schedule award. She asserted that the medical evidence demonstrated that appellant suffered more medical conditions than had been accepted, including pudendal nerve neuropathies. Counsel maintained that, if OWCP had accepted these conditions, appellant would have received a schedule award based on the designation of "unspecified symptoms associated with female genital organs." She contended that appellant suffered from both bladder and bowel disease as a consequence of this diagnosis. The Board notes that to be eligible for a schedule award an employee must establish that the claimed impairment is causally related to the accepted work injury.<sup>17</sup> To the extent that OWCP has not accepted that appellant sustained pudendal nerve condition as a result of the January 10, 2008 employment incident, she is not entitled to a schedule award for impairment related to this condition.

Counsel further cited *S.S. v. U.S. Postal Service*<sup>18</sup> and *B.C. v. U.S. Postal Service*<sup>19</sup> as evidence that OWCP had granted schedule awards for permanent impairment due to a combination of bladder and other conditions. The Board in both cases pointed out that FECA and its implementing regulations do not allow a schedule award for the bladder. Accordingly, the employees in both cases did not receive a schedule award for bladder conditions but for their other accepted conditions that were scheduled members under FECA.

In the alternative counsel argued that a conflict in medical opinion existed between Dr. Helsten, appellant's treating physician, and Dr. Blum, the medical adviser, regarding whether appellant sustained a permanent impairment and that her claim should be referred to a Board-certified urologist to resolve the conflict. The Board finds that a medical conflict does not exist which would warrant referral to an impartial medical specialist. The Board notes that Dr. Blum agreed with Dr. Helsten's calculations regarding permanent impairment. However, the issue is not medical in nature, rather it is legal because neither FECA nor OWCP's implementing regulations provide for a schedule award for the bladder or the bowel. Thus, regardless of

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<sup>13</sup> *Supra* note 12.

<sup>14</sup> A.M.A., *Guides* 494-531; *see also* *L.W.*, Docket No. 13-715 (issued June 14, 2013).

<sup>15</sup> *Janet C. Anderson*, 54 ECAB 394 (2003).

<sup>16</sup> *See D.K.*, Docket No. 12-1190 (issued June 17, 2013).

<sup>17</sup> *R.A.*, Docket No. 8-1301 (issued March 5, 2009).

<sup>18</sup> Docket No. 14-272 (issued July 8, 2014).

<sup>19</sup> Docket No. 13-1855 (issued July 22, 2014).

whether Dr. Helsten properly calculated appellant's impairment for her accepted bladder and bowel conditions, FECA does not authorize for a schedule award for these conditions.

**CONCLUSION**

The Board finds that appellant has not sustained a ratable impairment of the lower extremities, bladder, and bowel due to her accepted January 10, 2008 employment injury entitling her to a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 7, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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