

FACTUAL HISTORY

On October 22, 2010 appellant, then a 61-year-old tractor trailer operator, filed a traumatic injury claim alleging that on that day he sustained neck and lower back injuries as a result of being rear-ended while driving a tractor trailer in the performance of duty. OWCP accepted the claim for lumbar and neck sprains.

On December 3, 2013 appellant filed a claim for a schedule award.

In a letter dated December 19, 2013, OWCP informed appellant of the medical evidence required to establish a schedule award claim. It also advised that any permanent impairment rating must use the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*). Appellant was given 30 days to provide the requested information.

In support of his claim appellant submitted surgical reports by Dr. David J. Wyatt, a treating physician Board-certified in orthopedic surgery. Diagnoses included L4-5 instability with spondylosis, status post motor vehicle accident and bilateral L4-5 and L5-S1 facet arthropathy with facet generated mechanical back pain. On March 18 and May 13, 2011 Dr. Wyatt performed bilateral L4-5 and L5-S1 facet block. In a July 8, 2011 report, he performed a bilateral L3-5 radiofrequency rhizotomy procedure on appellant.

By decision dated September 10, 2014, OWCP denied appellant's claim for a schedule award as he failed to submit any medical report with an impairment rating or examination findings warranting review by an OWCP medical adviser.

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 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

² *Id.* at § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

The sixth edition requires identifying the impairment for the Class of Diagnosis (CDX) condition which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).⁶ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

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 *The Guides Newsletter*, rating spinal nerve extremity impairment using the sixth edition (July/August 2009) is to be applied.⁷

ANALYSIS

OWCP denied appellant's claim for a schedule award as the record did not include an impairment rating. Prior to denying his claim, it advised appellant of the need to submit an impairment rating under the A.M.A., *Guides* (6th ed. 2009). In support of his claim appellant submitted reports dated March 18, May 13, and July 8, 2011 from Dr. Wyatt. Dr. Wyatt's surgical reports do not address impairment. In addition, these records do not include a sufficiently detailed description of impairment that would allow one to visualize the character and degree of appellant's disability or whether appellant had reached maximum medical improvement.

Without a medical evaluation of permanent impairment under the sixth edition of the A.M.A. *Guides*, appellant has failed to establish a *prima facie* claim for a schedule award. The Board will therefore affirm OWCP's September 10, 2014 decision.

On appeal appellant argues that he sustained permanent injuries as a result of the accepted employment injury and will need the money from a schedule award for future medical treatment. As noted above he has not submitted any medical evidence containing an impairment rating as requested by OWCP. Accompanying his appeal appellant resubmitted copies of Dr. Wyatt's reports. As discussed above these reports are insufficient to establish his claim for a schedule award as they contain no impairment rating using the sixth edition of the A.M.A., *Guides*.

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 met his burden of proof to establish that he is entitled to a schedule award as a result of his accepted employment injuries.

⁶ A.M.A., *Guides* 494-531.

⁷ See *L.S.*, Docket No. 13-1703 (issued March 5, 2014); *G.N.*, Docket No. 10-850 (issued November 12, 2010); see also Federal (FECA) Procedure Manual, *supra* note 5 at Chapter 3.700, Exhibit 1, n.5 (January 2010). *The Guides Newsletter* is included as Exhibit 4.3.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 10, 2014 is affirmed.

Issued: June 18, 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