

**United States Department of Labor
Employees' Compensation Appeals Board**

C.B., Appellant

and

DEPARTMENT OF THE ARMY, GUTHRIE
CLINIC, Fort Drum, NY, Employer

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**Docket No. 15-503
Issued: June 12, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On January 7, 2015 appellant filed a timely appeal from a December 17, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established permanent impairment of the right upper extremity.

FACTUAL HISTORY

On July 9, 2012 appellant, then a 42-year-old nursing assistant, was injured when she slipped and fell on the floor at work. Her claim was initially accepted for cervical radiculopathy and later expanded to include displacement of cervical intervertebral disc without myelopathy at

¹ 5 U.S.C. § 8101 *et seq.*

C4-5.² Appellant stopped work on July 9, 2012 and returned to work on August 13, 2012. Later, she stopped work again on April 15, 2013 and returned on September 9, 2013. Appellant received appropriate continuation of pay and wage-loss compensation.

On September 12, 2013 appellant claimed a schedule award and provided a September 24, 2013 report from Dr. Baird who advised that appellant complained of numbness and tingling of the right upper extremity that radiated down to her neck and hand. Dr. Baird noted that electrodiagnostic studies performed in June 2013 revealed chronic right C5-6 radiculopathy. On physical examination he found decreased sensation in the back and volar aspect of the thumb, index finger and palm, no peripheral edema, and tenderness with palpation at the base of the cervical spine right of midline. Dr. Baird reported an impression of right arm cervical radiculopathy likely due to adjacent level degenerative changes. He reported that appellant had a significant limitation use of the right upper extremity secondary to her discomfort and sensory defects. Dr. Baird opined that appellant had 60 percent loss of the use of the right upper extremity compared to what she had prior to the work incident.

By letter dated October 23, 2013, OWCP advised appellant that the medical evidence was insufficient to establish that she sustained a permanent impairment to the right upper extremity because she failed to submit an impairment rating in conformance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. OWCP requested that she obtain such a report from her treating physician.

Appellant submitted letters informing OWCP that she was unable to find a physician willing to perform an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*. By letter dated November 7, 2013, she asked that OWCP schedule an appointment for an impairment rating.

On December 20, 2013 OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Sury Putcha, a Board-certified orthopedic surgeon, for an impairment evaluation. In a January 8, 2014 report, Dr. Putcha noted appellant's history and reviewed her medical record. He advised that in 2008 appellant had an anterior cervical discectomy and fusion at C5-6 and placement of plate and screws for disc degeneration, disc protrusion, and right arm pain. On physical examination Dr. Putcha noted that appellant's neck movements were somewhat restricted, she was able to turn right and left to 60 degrees, extend 45 degrees, and lateral flex about 20 degrees, and that she did not display muscle spasm in her cervical spine within those range of movements. He further noted that the right arm was generally weaker than the left, specifically her right hand's grip strength was 35 pounds compared to 75 pounds on the left. Dr. Putcha advised that appellant's fine motor movements were intact, there was no thenar or hypothenar atrophy, she complained of numbness in the thumb and index finger, and her push-pull strength of the right arm was limited secondary to pain. He stated that findings from a 2013 cervical spine magnetic resonance imaging (MRI) scan showed mild disc protrusions on the right at C4-5 and C6-7 but no nerve compression.

² On July 12, 2012 Dr. Bruce Baird, a Board-certified orthopedic surgeon, advised that appellant had neck pain radiating to the right arm after an injury at work on July 9, 2012. He advised that a computerized tomography scan of the cervical spine did not show a fracture. Dr. Baird noted that appellant had a C5-6 anterior cervical decompression and fusion in 2008. Cervical spine x-rays showed no change compared to 2009 films and indicated that there was no failure of the plate hardware or any significant adjacent level degenerative changes. Dr. Baird diagnosed cervical sprain and potential right arm cervical radiculopathy.

Dr. Putcha diagnosed soft tissue injury to the neck resulting in radicular symptoms to the right upper extremity without conclusive evidence of nerve root compressions at C4-5 or C6-7. He opined that appellant's disc bulges of C4-5 and C6-7 levels were preexisting in nature secondary to cervical degenerative disc disease and her preexisting fusion of C5-6 level. Dr. Putcha advised that appellant reached maximum medical improvement on July 8, 2013. He further advised that using the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter* there was no nerve root related disability attributable to the July 9, 2012 injury.

On March 4, 2014 an OWCP medical adviser reviewed Dr. Putcha's report and agreed that there was no permanent impairment to the right upper extremity due to the July 9, 2012 work injury. He explained that, because Dr. Putcha could not find any nerve root involvement relating to the work incident, he could not use the peripheral nerve impairment tables. The medical adviser noted that there was a difference of opinion between Dr. Putcha's report and an earlier second opinion report;³ however, he explained that the impairment rating would be the same because the earlier report also failed to find any objective neuropathy on examination.

By decision dated March 28, 2014, OWCP found that medical evidence was insufficient to establish that appellant sustained a permanent impairment to a scheduled member due to the accepted work injury.

By letter dated April 9, 2014, appellant requested an oral hearing. In an April 3, 2014 statement, she advised that although she had a preexisting cervical condition that required surgery in 2008, appellant was free from pain and residuals until her July 9, 2012 work injury. She also alleged that during her examination, Dr. Putcha's conduct was inappropriate and harassing.

On November 5, 2014 an oral hearing took place. Appellant reiterated that Dr. Putcha was inappropriate during her examination and noted that after the examination she reported his conduct to the company that scheduled the appointment. She also noted that Dr. Putcha told her that she had a 10 percent impairment of the right upper extremity using Table 13-11 on page 335 of the A.M.A., *Guides*. The hearing representative advised appellant that Table 13-11 dealt with whole-person impairment which could not be used for impairment ratings under FECA. The hearing representative also advised appellant that if her attending physician disagreed with Dr. Putcha's rating, he could submit a report in writing.

By decision dated December 17, 2014, an OWCP hearing representative affirmed the denial of a schedule award.

³ In a May 20, 2013 report, Dr. Gregory Shankman, a Board-certified orthopedic surgeon and OWCP referral physician with respect to whether appellant had work-related residuals, diagnosed an employment-related cervical herniated disc. He indicated that appellant had good strength in the muscle groups. Appellant had intact radial, median, and ulnar nerve function of both hands with good sensation to light touch and pinprick. Dr. Shankman was not asked to address permanent impairment.

LEGAL PRECEDENT

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁴

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.⁵ FECA, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁶ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.⁸

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, under FECA a schedule award is not payable for injury to the spine.⁹ In 1960, amendments to FECA modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of FECA include the extremities, a claimant may be entitled to schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.¹⁰

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.¹¹ OWCP has adopted this approach for rating impairment to the upper or lower extremities caused by a spinal injury.¹²

⁴ *Veronica Williams*, 56 ECAB 367 (2005).

⁵ 5 U.S.C. § 8107.

⁶ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁷ 20 C.F.R. § 10.404.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010); *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

⁹ *Pamela J. Darling*, 49 ECAB 286 (1998).

¹⁰ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

¹¹ *L.J.*, Docket No. 10-1263 (issued March 3, 2011).

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

ANALYSIS

OWCP accepted the claim for cervical radiculopathy and displacement of cervical intervertebral disc without myelopathy. The Board finds that OWCP properly determined that appellant did not sustain a permanent impairment of the right upper extremity related to the July 9, 2012 work incident.

Appellant submitted a September 24, 2013 report from Dr. Baird, who noted findings and reported an impression of right arm cervical radiculopathy likely due to adjacent level degenerative changes. Dr. Baird stated that appellant had a significant limitation to use of the right arm secondary to her discomfort and sensory defects. He opined that she had 60 percent loss of the use of the right arm compared to what she had prior to the work injury. This report is of limited probative value as Dr. Baird did not address permanent impairment pursuant to the A.M.A., *Guides* or *The Guides Newsletter*. The Board has held that schedule awards are to be based on the A.M.A., *Guides*. An estimate of permanent impairment is irrelevant and not probative where it is not based on the A.M.A., *Guides*.¹³

Thereafter, OWCP referred her to Dr. Putcha for an impairment evaluation. On January 8, 2014 Dr. Putcha referenced the A.M.A., *Guides* and *The Guides Newsletter*, but found no basis on which to attribute permanent impairment to appellant's accepted conditions. On examination Dr. Putcha found that appellant's neck movements were somewhat restricted, noted neck ranges of motion, and advised that she did not display acute muscle spasm in her cervical spine within those range of movements. He further noted that the right arm's strength was generally weaker than the left. Dr. Putcha advised that her fine motor movements were intact, there was no thenar or hypothenar atrophy, she complained of numbness in the thumb and index finger, and her push-pull strength of the right arm was limited secondary to pain. He noted that appellant reported right arm radicular symptoms, but he advised that there was no conclusive evidence of nerve root compression at C4-5 and C6-7, noting findings from a 2013 MRI scan study. Dr. Putcha further explained that her problems at C5-6 were due to her preexisting condition. He concluded that he could find no nerve root related disability that was attributable to the July 9, 2012 injury.

In a March 4, 2014 report, an OWCP medical adviser concurred with Dr. Putcha's opinion that there was no objective basis on which to rate impairment for the right arm attributable to the July 9, 2012 injury.

The Board finds that the weight of the medical evidence rests with Dr. Putcha and OWCP medical adviser. Dr. Putcha's report provided an accurate factual and medical history and provided detailed findings on examination to support his opinion. OWCP medical adviser agreed with Dr. Putcha finding that there was no medical evidence of record that provided findings to support permanent impairment of the right arm under the A.M.A., *Guides*. The Board finds that there is no probative medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has a permanent impairment of the right upper extremity or other scheduled body member.

¹³ *Shalanya Ellison*, 56 ECAB 150, 154 (2004).

On appeal appellant alleged misconduct by Dr. Putcha. However, she did not provide any corroborative evidence to support her allegations. The Board has held that it is a claimant's burden of proof to support misconduct allegations.¹⁴ Appellant also argued that OWCP should consider her constant discomfort and the impact that the accepted conditions will have on her life henceforth. However, the Board has held that factors such as limitations on daily activities have no bearing on the calculation of a schedule award.¹⁵

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 to the right upper extremity due to her accepted employment condition.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁴ *Geraldine Foster*, 54 ECAB 435 (2003).

¹⁵ *Kimberly M. Held*, 56 ECAB 670 (2005).