



mail container and throwing telephone books at work.<sup>2</sup> She stopped work on May 27, 2008. OWCP accepted that appellant sustained sprains of her neck, thoracic region, and lumbar region and she received disability compensation on the daily rolls beginning July 12, 2008.

In a report dated June 11, 2008, Dr. Melinda-Ann Roth, an attending Board-certified physical medicine and rehabilitation physician, noted appellant's chief complaint was upper back pain and left-sided low back pain extending into her left buttock due to her May 24, 2008 work injury.<sup>3</sup> Appellant also complained of pain in her neck, shoulders, and left proximal thigh. Dr. Roth diagnosed cervicodorsal musculoligamentous strain/sprain, left greater than right, and left sacroiliac joint restriction which caused pain to radiate into the left proximal thigh and occasionally around the left lateral pelvis.<sup>4</sup>

On February 18, 2009 appellant filed a claim for a schedule award (Form CA-7) due to her accepted work injuries.

OWCP referred appellant for further evaluation of her medical condition to Dr. Stuart J. Gordon, a Board-certified orthopedic surgeon. Dr. Gordon was asked to provide an impairment rating under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009) and to indicate whether any additional medical conditions should be accepted as work related either as directly related to the May 24, 2008 injury/incident or by way of a work-related aggravation of any preexisting condition.

In a December 6, 2010 report, Dr. Gordon reported the findings of his physical examination on that date, noting that appellant had intact sensation and motor strength in her upper and lower extremities. He calculated two percent permanent impairment of her cervical spine, two percent permanent impairment of her thoracic spine, and two percent permanent impairment of her lumbar spine.<sup>5</sup> Dr. Gordon noted that he did not believe that any diagnosis beyond neck sprain, thoracic sprain, or lumbar sprain should be added to the currently accepted diagnoses. He noted that appellant could work full duty and did not require any additional treatment. In a supplemental report dated December 22, 2010, Dr. Gordon noted that, if he were to only consider the permanent impairment of appellant's upper extremities, she would have zero percent permanent impairment of her upper extremities under the standards of the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*.<sup>6</sup>

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<sup>2</sup> Appellant indicated that she felt something "pop" when she was throwing telephone books. She initially claimed that the injury occurred on May 26, 2008 but later changed the date to May 24, 2008.

<sup>3</sup> Appellant noted that, upon standing, she would experience pain that radiated into her left proximal thigh and would occasionally have pain that wrapped around her left lateral pelvis. She indicated that she did not have any lower extremity numbness, tingling, or weakness.

<sup>4</sup> Dr. Roth provided a similar assessment of appellant's condition in a June 26, 2008 report.

<sup>5</sup> In calculating these impairment ratings, Dr. Gordon referenced portions of Chapter 17 (The Spine and Pelvis) of the sixth edition of the A.M.A., *Guides*.

<sup>6</sup> See *infra* notes 19 through 21.

On January 3, 2011 Dr. Christopher R. Brigham, a Board-certified occupational medicine physician serving as an OWCP medical adviser, reviewed the medical evidence, including the December 6 and 22, 2010 reports of Dr. Gordon, and concluded that appellant did not have any permanent impairment of her upper or lower extremities under the sixth edition of the A.M.A., *Guides*. He acknowledged that a schedule award is not payable for the spine under FECA and that the medical evidence of record did not show that appellant had permanent impairment extending from her spine into her extremities.

By decision dated January 18, 2011, OWCP denied appellant's claim for schedule award compensation. It noted that the medical evidence of record, including the reports of Dr. Gordon and Dr. Brigham, showed that appellant had not established a permanent impairment.

In mid-2014, appellant again filed a claim for a schedule award due to her accepted work injuries. She was provided an opportunity to submit an impairment rating from an attending physician, but no such rating was received.<sup>7</sup>

In November 2014 appellant submitted a request for authorization of x-ray testing of her left shoulder and hips. OWCP advised that the requested treatment did not appear to be medically necessary for her accepted conditions. In various communications sent to OWCP, including letters originally sent to a congressional representative, appellant asserted that she sustained injuries other than the accepted cervical, thoracic, and lumbar sprains due to the May 24, 2008 work injury, including injuries to her shoulders, hips, and left leg.

OWCP referred appellant for further evaluation of her medical condition to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon. Dr. Hanley was asked to indicate whether additional conditions should be accepted and whether appellant was entitled to schedule award compensation.

In a December 5, 2014 report, Dr. Hanley detailed appellant's factual and medical history and reported findings on physical examination. He found mild limitation of cervical motion, that the sensory and muscle strength examinations of appellant's extremities were normal and he diagnosed degenerative disc disease of the cervical and lumbar spines. Dr. Hanley noted that there was no doubt that appellant had pathology in the spinal axis, but he did not see any evidence in the medical record that a "significant element of injury" occurred at the time of the incident described on May 24, 2008. He noted that a substantive material change to the spinal axis did not occur as a consequence of the May 24, 2008 exposure. Dr. Hanley noted that appellant's original incident caused her to feel a pop in the neck and short-term pain. It was only later that she developed widespread symptomatology and it was difficult to attribute those findings to that incident. Dr. Hanley opined:

"With regard to impairment, it has been determined in the past that she does not have signs of extremity impairment, and I would agree at this time. Taking into account the [A.M.A., *Guides*] as well as [*The Guides Newsletter*] written by

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<sup>7</sup> On August 12, 2014 OWCP received a handwritten notation in which Dr. Lynn Staggs, an attending physical medicine and rehabilitation physician, noted that she would not be providing an impairment rating because she felt that such ratings should be provided by nontreating physicians.

Dr. Brigham that describes the methodology for rating extremity difficulties secondary to spinal nerve injury, there is no impairment whatsoever in either the upper or lower extremities. [Appellant's] subjective complaints tend more to her spinal axis degenerative disease than anything else, and her objective findings relative to that include radiographic evidence of degenerative disease, limitation of motion of the spine, and subjective symptomatology. Therefore, she has zero percent impairment of the upper and lower extremities from this work injury."

By decision dated February 27, 2015, OWCP found that appellant had not established work-related conditions other than those already accepted. It also determined that she was not entitled to schedule award compensation for permanent impairment.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any specific condition and/or disability for which compensation is claimed are causally related to the employment injury.<sup>8</sup>

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>9</sup> The medical evidence required to establish a causal relationship between a claimed condition and employment factors is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed condition and the specific employment factors identified by the claimant.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained sprains of her neck, thoracic region, and lumbar region due to moving an all-purpose mail container and throwing telephone books at work on May 24, 2008. Appellant later claimed that she sustained injuries other than the accepted cervical, thoracic, and lumbar sprains due to the May 24, 2008 work injury, including injuries to her shoulders, hips, and left leg.

The Board finds that appellant has not established additional work-related conditions.

On appeal appellant claimed that June 11 and 16, 2008 reports of Dr. Roth showed that she had sustained injuries to her shoulders, hips, and left leg due to the work injury. She noted

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<sup>8</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>9</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>10</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

that appellant had complained of pain in her neck, shoulders, and left proximal thigh. Dr. Roth diagnosed cervicodorsal musculoligamentous strain/sprain, left greater than right, and left sacroiliac joint restriction (with pain radiating into the left proximal thigh and occasionally around the left lateral pelvis).<sup>11</sup> The Board notes, however, that while these reports indicate that appellant reported symptoms in areas other than the cervical, thoracic, and lumbar spines, they do not contain an opinion clearly relating these additional conditions to the May 24, 2008 injury.

Appellant has not submitted a rationalized medical report showing that she sustained work-related conditions other than those already accepted. On the contrary, the record contains several medical reports containing opinions that she did not sustain injuries on May 24, 2008 other than the accepted cervical, thoracic, and lumbar sprains. In Dr. Gordon's December 6, 2010 report, he did not believe that any diagnosis beyond neck sprain, thoracic sprain, or lumbar sprain should be added to the current accepted diagnoses. He noted that appellant could work full duty and did not require any additional treatment. In a December 5, 2014 report, Dr. Hanley indicated that the sensory and muscle strength examinations of appellant's extremities were normal. He noted that a substantive material change to the spinal axis did not occur as a consequence of the May 24, 2008 work factors and he did not find that any injury occurred on that date beyond the cervical, thoracic, and lumbar spines.

The Board finds that OWCP properly denied appellant's claim to expand the accepted conditions.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

The schedule award provision of FECA<sup>12</sup> and its implementing regulations<sup>13</sup> 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.<sup>14</sup>

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<sup>11</sup> Dr. Roth provided a similar assessment of appellant's condition in a June 26, 2008 report.

<sup>12</sup> 5 U.S.C. § 8107.

<sup>13</sup> 20 C.F.R. § 10.404.

<sup>14</sup> *W.B.*, Docket No. 14-1982 (issued August 26, 2015). For OWCP decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under FECA for injury to the spine.<sup>15</sup> A schedule award is not payable for the loss or loss of use, of a part of the body that is not specifically enumerated under FECA.<sup>16</sup> Moreover, neither FECA nor its implementing 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.<sup>17</sup>

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 a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.<sup>18</sup>

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.<sup>19</sup> The Board has long recognized the discretion of OWCP to adopt and utilize various editions of the A.M.A., *Guides* for assessing permanent impairment.<sup>20</sup> In particular, the Board has recognized the adoption of this methodology for rating extremity impairment, including the use of *The Guides Newsletter*, as proper in order to provide a uniform standard applicable to each claimant for a schedule award for extremity impairment originating in the spine.<sup>21</sup>

## **ANALYSIS -- ISSUE 2**

Appellant filed a claim for a schedule award due to her accepted work injuries. The Board finds that the medical evidence of record does not establish any permanent impairment.

On appeal, appellant claims that the December 6, 2010 report of Dr. Gordon was sufficient to establish two percent permanent impairment of her cervical spine, two percent permanent impairment of her thoracic spine, and two percent impairment of her lumbar spine.

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<sup>15</sup> *Pamela J. Darling*, 49 ECAB 286 (1998).

<sup>16</sup> *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>17</sup> *James E. Mills*, 43 ECAB 215, 219 (1991); *James E. Jenkins*, 39 ECAB 860, 866 (1990).

<sup>18</sup> *Supra* note 16.

<sup>19</sup> *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, Exhibit 1, note 5 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

<sup>20</sup> *D.S.*, Docket No. 14-12 (issued March 18, 2014).

<sup>21</sup> *See E.D.*, Docket No. 13-2024 (issued April 24, 2014); *D.S.*, Docket No. 13-2011 (issued February 18, 2014).

However, a schedule award is not payable under FECA for injury to the spine. Neither FECA nor its implementing regulations provide a schedule award for impairment to the back and the back is specifically excluded from the definition of organ under FECA.<sup>22</sup>

Appellant has not submitted medical evidence establishing that she is entitled to schedule award compensation for permanent impairment. In a report dated December 22, 2010, Dr. Gordon noted that, if he were to only consider the permanent impairment of her upper extremities, she would have zero percent permanent impairment of her upper extremities under the standards of the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*.<sup>23</sup> On January 3, 2011 Dr. Brigham, a Board-certified occupational medicine physician serving as an OWCP medical adviser, reviewed the medical evidence, including the reports of Dr. Gordon. He concluded that appellant did not have any permanent impairment of her upper or lower extremities under the sixth edition of the A.M.A., *Guides* because a schedule award was not payable for the spine under FECA and the medical evidence did not show that she had permanent impairment extending from her spine into her extremities. In his December 5, 2014 report, Dr. Hanley stated that, taking into account the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*, appellant did not have any permanent impairment in her upper or lower extremities. As noted above, he did not find that she sustained a work-related condition on May 24, 2008 which extended beyond her cervical, thoracic, or lumbar spines.

The Board finds that OWCP properly denied appellant's claim for schedule award compensation.

Appellant may request a 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 did not meet her burden of proof to expand her claim to include additional conditions. The Board further finds that OWCP properly denied appellant's claim for schedule award compensation.

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<sup>22</sup> See *supra* notes 16 through 18.

<sup>23</sup> See *supra* notes 20 through 22.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board