



## ISSUE

The issue is whether appellant has more than five percent permanent impairment of her right upper extremity for which she received a schedule award.

## FACTUAL HISTORY

On September 29, 2009 appellant, then a 51-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on September 24, 2009 she strained her right shoulder while repeatedly lifting 11-pound bags of sterile water. She underwent a magnetic resonance imaging (MRI) scan on November 5, 2009 which demonstrated right-sided disc herniation, mild spondylosis, and disc desiccation. By decision dated January 19, 2010, OWCP accepted appellant's claim for right C6 radiculopathy. On March 8, 2010 it accepted the additional conditions of cervical herniated disc, spinal stenosis in the cervical region, and cervical spondylosis without myelopathy.

Appellant underwent a C5-6 anterior cervical disc fusion on April 5, 2010. OWCP entered her on the periodic rolls on April 7, 2010. Appellant underwent an electromyogram (EMG) on July 2, 2010, which was normal.

Appellant returned to full-time light duty on August 23, 2010. By decision dated November 4, 2010, OWCP reduced her wage-earning capacity to zero based on her actual earnings.

By decision dated June 20, 2011, OWCP denied appellant's claim for a schedule award, finding that she had not established permanent impairment of a scheduled member.

Appellant underwent a cervical MRI scan on July 26, 2011 which demonstrated a large right lateral disc herniation at C6-7 with extruded component upon the right exiting nerve root and right transiting nerve root. She underwent removal of the anterior locking plate at C5-6 as well as a C6-7 anterior cervical discectomy and placement of interbody spacer on November 2, 2011.

Appellant filed a claim for a schedule award (Form CA-7) on May 23, 2012. By decision dated July 26, 2012, OWCP denied modification of its prior decision, finding that she had not established permanent impairment of a scheduled member entitling her to a schedule award.

OWCP continued to develop the medical evidence. On January 16, 2013 an OWCP medical adviser found that appellant had five percent permanent impairment of the right upper extremity due to mild motor radiculopathy at C7.

By decision dated January 28, 2013, OWCP granted appellant a schedule award for five percent permanent impairment of her right upper extremity.

Appellant underwent electrodiagnostic studies including EMG and nerve conduction velocity (NCV) studies on May 14, 2013 which were normal with no evidence of significant focal neuropathy or active radiculopathy. She submitted a December 5, 2012 MRI scan which demonstrated anterior cervical fusions at C5-6 and C6-7 with minimal central disc bulge at C4-5.

In a letter and form dated January 22 and 23, 2014, respectively, appellant requested reconsideration of OWCP's January 28, 2013 decision. OWCP received both documents on January 31, 2014. Appellant argued that, although her objective findings did not support her claim for an increased schedule award, her subjective findings were sufficient to warrant additional permanent impairment. She submitted a statement that she had not been able to schedule an appointment with a physician since October 2013. Appellant also submitted medical evidence consisting of the MRI scan of the right shoulder dated April 27, 2011, an x-ray dated March 31, 2011, and a cervical MRI scan dated December 5, 2012. She underwent an electrodiagnostic study on May 14, 2013 which was normal.

By decision dated February 10, 2014, OWCP declined to reopen appellant's claim for consideration of the merits, finding that her request for reconsideration was untimely as it was received on January 31, 2014, more than one year after the January 28, 2013 merit decision. It further found that her request for reconsideration failed to demonstrate clear evidence of error.

Appellant appealed to the Board, in an order dated March 10, 2015.<sup>4</sup> The Board set aside the February 10, 2014 OWCP decision and remanded the case for review under the appropriate standard for a request for an increased schedule award.

Dr. Michael Winkelmann, a Board-certified physiatrist, examined appellant on February 12 and March 26, 2014. He found significant cervical spine pain which he believed was related to appellant's facet joints. Dr. Winkelmann recommended injections.

Dr. Jeffrey T. Laseter, a pain medicine specialist, examined appellant on April 9 and 24, 2014 and found neck and bilateral arm pain. He noted appellant's history of injury and medical history. Dr. Laseter found tenderness to palpation in the cervical spine as well as positive pain with facet loading. He diagnosed cervical spondylosis and facet arthropathy bilaterally from C7 through T1.

OWCP's medical adviser reviewed the medical evidence in the record on April 27, 2015 and found that appellant had no more than five percent impairment of the right arm based on right C7 spinal nerve root impairment previously received. He found that appellant had submitted no evidence of additional impairment of the right upper extremity.

In a letter dated May 11, 2015, OWCP informed appellant of the findings of OWCP's medical adviser and allowed her 30 days to submit additional medical evidence supporting more than five percent impairment of her right upper extremity.

Appellant submitted additional notes from Dr. Winkelmann dated April 7 and May 7, 2015 noting that she had no significant new problems. On June 4, 2015 Dr. Winkelmann found right-sided upper trapezius pain and numbness in the right upper extremity. He recommended additional physical therapy. Appellant was involved in a motor vehicle accident in July 2015. Dr. Winkelmann reported exacerbation of cervical spine and upper trapezius pain.

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<sup>4</sup> *Order Remanding Case*, Docket No. 14-1679 (issued March 10, 2015).

By decision dated August 3, 2015, OWCP denied appellant's claim for an additional schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>5</sup> and its implementing regulations<sup>6</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of use of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>7</sup>

No schedule award is payable for a member, function or organ of the body not specified in FECA or in the regulations.<sup>8</sup> Because neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine,<sup>9</sup> no claimant is entitled to such an award.<sup>10</sup>

Amendments to FECA, however, 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. As the schedule award provisions of FECA include the extremities, a claimant may be entitled to a schedule award for permanent impairment to a limb even though the cause of the impairment originated in the spine.<sup>11</sup>

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. Recognizing that certain jurisdictions, such as federal claims under FECA, mandate ratings for extremities and preclude ratings for the spine, the A.M.A., *Guides* has offered an approach to rating spinal nerve impairments consistent with

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6<sup>th</sup> ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

<sup>8</sup> *W.D.*, Docket No. 10-274 (issued September 3, 2010); *William Edwin Muir*, 27 ECAB 579 (1976).

<sup>9</sup> FECA itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

<sup>10</sup> *W.D.*, *supra* note 8. *Timothy J. McGuire*, 34 ECAB 189 (1982).

<sup>11</sup> *W.D.*, *supra* note 8. *Rozella L. Skinner*, 37 ECAB 398 (1986).

sixth edition methodology.<sup>12</sup> OWCP has adopted this approach for rating impairment of the upper or lower extremities caused by a spinal injury, as provided in section 3-700 of its procedures.<sup>13</sup> Specifically, OWCP will address lower extremity impairments originating in the spine through Table 16-11<sup>14</sup> and upper extremity impairment originating in the spine through Table 15-14.<sup>15</sup>

### ANALYSIS

The Board finds that appellant has not submitted medical evidence of more than five percent permanent impairment of her right upper extremity for which she has already received a schedule award.

OWCP granted appellant a schedule award for five percent permanent impairment of her right upper extremity due to C7 nerve root impairment on January 28, 2013. Appellant requested reconsideration and alleged that she experienced additional impairment of her right upper extremity due to her accepted cervical conditions. In support of her claim for an additional schedule award, she submitted electrodiagnostic studies as well as notes from Drs. Winkelmann and Laseter.

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish an increased impairment due to her accepted employment injuries. While appellant submitted medical evidence regarding her continuing medical conditions, none of the medical evidence submitted provided findings correlated with the appropriate provisions of the A.M.A., *Guides* addressing her permanent impairment. Neither Dr. Winkelmann nor Dr. Laseter addressed appellant's permanent impairment for schedule award purposes. Furthermore, the electrodiagnostic studies were read as normal, findings which did not support permanent impairment. OWCP's medical adviser reviewed this evidence and found that appellant had no more than five percent impairment of the right upper extremity.

As appellant did not submit medical evidence supporting a worsening of her accepted conditions resulting in more than five percent impairment of her right upper extremity, she has not met her burden of proof to establish entitlement to an additional or increased schedule award.

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.

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<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5c(3) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4, (January 2010).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibits 1, 4, (January 2010).

<sup>14</sup> A.M.A., *Guides* 533, Table 16-11.

<sup>15</sup> *Id.* at 425, Table 15-14.

**CONCLUSION**

The Board finds that appellant has no more than five percent permanent impairment of her right upper extremity for which she received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 3, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2016  
Washington, DC

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

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

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