

ISSUE

The issue is whether appellant met her burden of proof to establish permanent impairment of her bilateral lower extremities warranting a schedule award.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

FACTUAL HISTORY

On July 26, 2010 appellant, then a 43-year-old psychiatric nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that she injured her lower back, spine, and buttock that day while breaking a patient's fall at work. OWCP accepted the claim for sprain of back, lumbar region.

On March 6, 2014 appellant filed a claim for a schedule award (Form CA-7). She submitted medical evidence, including a January 31, 2014 disability certificate from Dr. Shaku Chhabria, an attending Board-certified neurologist. Dr. Chhabria advised that appellant could return to light-duty work on February 17, 2014. She opined that appellant had reached maximum medical improvement (MMI).

By letter dated March 12, 2014, OWCP advised appellant of the deficiencies of her claim and requested a medical report from her treating physician assessing her permanent impairment based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)³ and establishing the date on which she had reached MMI.

Appellant submitted medical evidence, including a progress note dated August 26, 2014 and signed by Dr. Chhabria on September 1, 2014. Dr. Chhabria noted appellant's history of injury and medical, family, and social background. She noted that a system review was negative. Dr. Chhabria reported normal findings on examination, which included normal sensory and motor examination of the arms and legs. On inspection, she reported exaggerated lordosis, limited range of motion in all directions, standing forward, scar from a previous surgery, significant muscle spasm, moderate paraspinal spasm, and a positive straight leg raising test at 45 degrees on the right. Dr. Chhabria provided an impression of sciatica, chronic lumbar radiculopathy, lumbar disc prolapse with compression radiculopathy, and status post laminectomy.

In an October 31, 2014 medical report, Dr. Neil Allen, an attending Board-certified internist and neurologist, noted a history of the accepted July 26, 2010 employment injury and appellant's medical and functional background. Dr. Allen provided findings on examination of the lumbar spine and bilateral lower extremities and reviewed diagnostic test results. He utilized the July/August 2009 *The Guides Newsletter*, proposed Table 2, and Table 15-14, page 425 in the sixth edition of the A.M.A., *Guides* to find that appellant had 23 percent permanent impairment for motor deficits and 6 percent impairment for sensory deficits, which totaled 29 percent permanent impairment of the left lower extremity.

³ A.M.A., *Guides* (6th ed. 2009).

On May 1, 2015 an OWCP district medical adviser (DMA) reviewed the medical record and found that appellant had no impairment of either lower extremity. He utilized section 16.4 on page 531 of the A.M.A., *Guides* and July/August 2009, *The Guides Newsletter* of the sixth edition of the A.M.A., *Guides* to rate impairment of appellant's lumbar spine. Regarding impairment to appellant's left lower extremity, he referred to Dr. Chhabria's September 1, 2014 note which found normal lower extremity sensory and motor examinations. Using Table 16-11, page 533 and *The Guides Newsletter*, July/August 2009 of the A.M.A., *Guides*, the DMA determined that appellant had a class 0 for bilateral extremity sensory and motor loss with a value of zero percent permanent impairment.

In a July 27, 2015 decision, OWCP denied appellant's claim for a schedule award. It found that the DMA's report represented the weight of the medical opinion evidence and established that she had no permanent impairment as a result of her accepted employment injury.

By letter dated August 3, 2015, appellant, through counsel, requested a telephone hearing with an OWCP hearing representative which was held on March 7, 2016.

In an April 28, 2016 decision, OWCP's hearing representative affirmed the July 27, 2015 decision, finding the weight of the medical evidence rested with the opinion of the DMA.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ 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.⁵

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), 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).

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.⁷ In

⁴ *Id.*

⁵ 20 C.F.R. § 10.404 (1999); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁶ *Supra* note 3 at 494-531.

⁷ *W.D.*, Docket No. 10-274 (issued September 3, 2010); *Richard R. LeMay*, 56 ECAB 341 (2005); *Pamela J. Darling*, 49 ECAB 286 (1998).

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.⁸

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. The A.M.A., *Guides* provides an alternative approach to rating spinal nerve impairments, under the July/August 2009 edition of *The Guides Newsletter* of the sixth edition.⁹ OWCP has adopted this approach for rating impairment of the upper or lower extremities caused by a spinal injury, which has been memorialized in section 3.700 of its procedures. Specifically, lower extremity impairments originating in the spine are found in Table 16-11¹⁰ and upper extremity impairment originating in the spine are found in Table 15-14.¹¹

Before the A.M.A., *Guides* can be utilized, a description of impairment must be obtained from the claimant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹²

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a medical adviser for an opinion concerning the nature and percentage of permanent impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.¹³

ANALYSIS

The Board finds that appellant failed to establish any permanent impairment to her bilateral lower extremities. OWCP accepted appellant's claim for sprain of back, lumbar region

⁸ *K.H.*, Docket No. 09-341 (issued December 30, 2009); *Thomas J. Engelhart*, 50 ECAB 319 (1999).

⁹ FECA Transmittal No. 10-04 (issued January 9, 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *The Guides Newsletter* is included as Exhibit 4.

¹⁰ *Supra* note 3 at 533.

¹¹ *Id.* at 425.

¹² *Vanessa Young*, 55 ECAB 575 (2004).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

as a result of a June 26, 2010 employment injury. On March 6, 2014 appellant filed a claim for a schedule award.

In support of her claim, appellant submitted reports from Dr. Chhabria, her attending physician. While Dr. Chhabria indicated in her January 31, 2014 disability certificate that appellant had reached MMI and could return to light-duty work on February 17, 2014, she did not offer an opinion as to whether appellant had any permanent impairment due to the June 26, 2010 employment injury. Similarly, in an August 26, 2014 progress note, Dr. Chhabria did not provide a medical opinion as to whether appellant had reached MMI or sustained any impairment causally related to the accepted lumbar condition. As noted, the evaluation made by the attending physician must include a description of the impairment that is of sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹⁴ As Dr. Chhabria did not discuss any permanent impairment due to the accepted work injury, her reports are of diminished probative value and therefore insufficient to establish appellant's permanent impairment.

While Dr. Allen referenced the July/August 2009 *The Guides Newsletter* in his October 31, 2014 report, he did not provide an evaluation in accordance with Table 16-11, page 533 of the A.M.A., *Guides*, sensory and motor severity for the lower extremities.¹⁵ Rather, his evaluation was done under Table 15-14, page 425 of the A.M.A., *Guides*, sensory and motor severity for the upper extremities.¹⁶ Dr. Allen concluded that appellant had 23 percent impairment for motor deficits and six percent impairment for sensory deficits, which totaled 29 percent permanent impairment of the left lower extremity. The Board has long held that an opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's impairment.¹⁷ As such, the Board finds that Dr. Allen's opinion is of limited probative value regarding appellant's left lower extremity impairment.

On May 1, 2015 an OWCP DMA reviewed the medical record and disagreed with Dr. Allen's impairment rating.¹⁸ He explained that Dr. Allen's October 31, 2014 examination findings were drastically different from Dr. Chhabria's September 1, 2014 examination findings. The DMA used Dr. Chhabria's examination results and applied Table 16-11, page 553 and *The Guides Newsletter*, July/August 2009, using Proposed Table 2 of the sixth edition of the A.M.A., *Guides*. He determined that appellant had zero percent right leg and zero percent left leg permanent impairment. The DMA noted no motor or sensory deficits in either lower leg and found no ratable impairment. The Board finds that OWCP's DMA properly concluded that appellant has no permanent impairment of her lower extremities resulting from the accepted

¹⁴ *Supra* note 12.

¹⁵ *Supra* note 3 at 533.

¹⁶ *Supra* note 3 at 425.

¹⁷ *Carl J. Cleary*, 57 ECAB 563 (2006).

¹⁸ *Supra* note 14.

condition and that, therefore, there was no ratable impairment of a scheduled member under the sixth edition of the A.M.A., *Guides*.

Appellant failed to submit sufficient medical evidence to establish permanent impairment to a specified member, organ, or function of the body listed in FECA or its implementing regulations as a result of her employment-related accepted sprain of back, lumbar region. Thus, she has not met her burden of proof.

On appeal counsel contends that OWCP's decision is contrary to fact and law. For reasons stated above, the Board finds that appellant failed to establish that she sustained permanent impairment to either lower extremity, warranting a schedule award.

Appellant may request a schedule award or increased schedule award at any time 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 her burden of proof to establish a schedule award for a permanent impairment of her bilateral lower extremities.

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2016
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