



he jumped off his all-terrain vehicle that had rolled over. He noted that he fractured his left ribs and injured his spleen. Appellant stopped work.

OWCP accepted appellant's claim for closed fracture of left ribs, blunt trauma to the chest and abdominal wall, spleen laceration, and left elbow contusion. It paid compensation benefits. On June 10, 2013 appellant returned to full-time modified duty.

By decision dated August 27, 2013, OWCP terminated appellant's wage-loss compensation benefits effective September 3, 2013 because he returned to his date-of-injury job on a full-time basis. Appellant continued to receive medical treatment.

On April 21, 2015 OWCP received appellant's claim for a schedule award (Form CA-7). In a February 18, 2015 report, Dr. Nicholas Kurz, a family practitioner, examined appellant for a possible impairment rating due to his July 24, 2012 workers' compensation injury. He reviewed appellant's history of injury and noted that his lacerated spleen had healed. Dr. Kurz related that appellant presently complained of chronic, intermittent left rib pain. Appellant noted that he felt a chronic lump in his left rib area where the fracture occurred and had intermittent, positional, dull pain in his left side. Upon examination, Dr. Kurz observed mild rib tenderness upon palpation in a small area of approximately five centimeters in the left anterior lateral rib. No gross rib deformity and no costochondral tenderness were present. Examination of the abdomen also revealed no tenderness or hepatosplenomegaly. Upon examination of appellant's upper extremities, Dr. Kurz reported near full range of motion and equal bilateral sensation and grip strength. Neurologic examination also demonstrated grossly intact cranial nerves and normal strength of the upper extremities.

Dr. Kurz diagnosed rib pain on the left side, work-related injury, closed spleen parenchymal laceration, head fracture of rib on left side with slight deformity, and obesity. He reported that appellant had reached maximum medical improvement (MMI) of his work-related injuries and had returned to full duty. Dr. Kurz opined that, according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (hereinafter, A.M.A., *Guides*) (6<sup>th</sup> ed. 2009), page 201, appellant had no impairment for healed spleen laceration. He noted that, according to Table 3-1, page 40, appellant had a moderate degree of pain-related impairment based on his Pain Disability Questionnaire (PDQ) of 91.<sup>2</sup> Dr. Kurz also mentioned Table 13-20, page 344, and determined that appellant was class 2 for a final whole person impairment rating of three percent.

In a letter dated April 29, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish his schedule award claim. It requested that he provide a medical report from his treating physician addressing whether he reached MMI and whether his accepted conditions caused permanent impairment pursuant to the sixth edition of the A.M.A., *Guides*.

Appellant resubmitted Dr. Kurz' February 18, 2015 impairment rating report along with a copy of Table 13-20 regarding Miscellaneous Peripheral Nerves in the sixth edition of the A.M.A., *Guides*.

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<sup>2</sup> Dr. Kurz provided appellant's PDQ dated February 18, 2015.

OWCP referred appellant's claim, along with the statement of accepted facts and the medical record, to its medical adviser. In a June 26, 2015 report, Dr. Morley Slutsky, Board-certified in occupational medicine, reviewed appellant's record, including Dr. Kurz' February 18, 2015 report, and disagreed with his impairment rating. He explained that Dr. Kurz' impairment rating was improper because all he documented was rib pain. Dr. Slutsky noted that pain was not an objective basis for a rating of permanent impairment. He reported that appellant's neurologic examination was normal and that there was no evidence of lung deficits or upper extremity deficits. Dr. Slutsky explained that appellant needed to have objective evidence of neurologic deficits to rate appellant using Table 13-20, but his neurologic examination was normal. He also noted that there was no evidence of deficits in the upper extremities or lung function. Dr. Slutsky concluded that appellant had no basis for an organ impairment or upper extremity impairment.

By decision dated June 30, 2015, OWCP denied appellant's schedule award claim. It found that he failed to establish that he sustained a ratable permanent impairment to a scheduled member causally related to his July 24, 2012 employment injury.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

No schedule award is payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.<sup>6</sup> Neither FECA nor implementing regulations specify the ribs as being members of the body for which a schedule award is payable.<sup>7</sup> A schedule award is not payable under section 8107 of FECA for an impairment of the whole person.<sup>8</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> 20 C.F.R. § 10.404 (1999); *see also* *Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>5</sup> *Veronica Williams*, 56 ECAB 357 (2005) (a schedule award can only be paid for a condition related to an employment injury).

<sup>6</sup> *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>7</sup> *See* *Terry E. Mills*, 47 ECAB 309 (1996).

<sup>8</sup> 5 U.S.C. § 8107. *See* *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

## ANALYSIS

OWCP accepted that appellant sustained a traumatic injury on July 24, 2012. Appellant stopped work and returned to full duty by September 3, 2013. On April 21, 2015 he filed a claim for a schedule award and provided a February 18, 2015 impairment rating by Dr. Kurz.

Dr. Kurz reviewed appellant's history of the July 24, 2012 employment injury and noted that appellant's lacerated spleen had healed. He reported that appellant continued to experience chronic, intermittent left rib pain. Upon examination, Dr. Kurz observed mild rib tenderness, but no gross rib deformity and no costochondral tenderness. Examination of the upper extremities revealed near full range of motion and equal bilateral sensation and grip strength. Dr. Kurz reported that neurologic examination was also normal. He diagnosed rib pain on the left side, closed spleen parenchymal laceration, head fracture of rib on left side, and obesity. Dr. Kurz noted that appellant had reached MMI and opined that according to the sixth edition of the A.M.A., *Guides*, Table 3-1, page 40 he had a moderate degree of pain-related impairment according to his PDQ score of 91. As noted above, however, neither FECA nor its implementing regulations recognize the ribs as being members of the body for which a schedule award may be payable.<sup>9</sup> Although Dr. Kurz referenced tables in the A.M.A., *Guides*, he did not explain that appellant had a permanent impairment that was related to a scheduled member as a result of the July 24, 2012 employment injury. Accordingly, appellant is not entitled to a schedule award for his rib pain.<sup>10</sup>

Furthermore, while Dr. Kurz provided a permanent impairment rating for the whole person of three percent, which he rated from Table 13-20, page 344, this rating is of no probative value on the relevant issue of this case because a schedule award is not payable under section 8107 of FECA for an impairment of the whole person.<sup>11</sup>

The Board finds, therefore, that Dr. Kurz' report is insufficient to establish appellant's schedule award claim.

In denying appellant's schedule award claim, OWCP relied on the June 26, 2015 report of Dr. Slutsky, an OWCP medical adviser. Dr. Slutsky reviewed Dr. Kurz' February 18, 2015 report and disagreed with the impairment rating because pain was not an objective basis for a rating. He noted that Dr. Kurz only documented rib pain upon examination and that appellant's neurologic examination was normal. Dr. Slutsky concluded that Dr. Kurz had no basis for an organ or upper extremity impairment causally related to appellant's July 24, 2012 employment injury.

The Board finds that OWCP properly afforded Dr. Slutsky the weight of the medical evidence as his opinion on permanent impairment properly followed the sixth edition of the A.M.A., *Guides*. Dr. Slutsky explained that, based on a review of the record and physical

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<sup>9</sup> *Id.*

<sup>10</sup> *C.E.*, Docket No. 08-1521 (issued January 7, 2009); *J.B.*, Docket No. 08-993 (September 11, 2008).

<sup>11</sup> *See P.H.*, Docket No. 13-1760 (issued May 7, 2014).

examination, there was no evidence of neurologic or upper extremity deficits that warranted an impairment rating according to the tables and protocols of the sixth edition of the A.M.A., *Guides*.<sup>12</sup> Accordingly, the Board finds that appellant did not meet his burden of proof.

On appeal, appellant asserts that he should be compensated for loss of motion on his left side. He states that the range of motion on his left was greatly diminished due to pain in his right ribs. Despite appellant's assertions, however, Dr. Kurz' examination of appellant's upper extremities revealed near full range of motion and normal strength. As previously noted, appellant has the burden of proving that his condition for which a schedule award is sought is causally related to his employment.<sup>13</sup> In this case, he has not provided such medical opinion evidence to establish that he sustained a left upper extremity impairment causally related to the July 24, 2012 employment injury.

Appellant may request a schedule award or increased schedule award based on evidence of 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 failed to establish a ratable impairment to a scheduled member causally related to his July 24, 2012 employment injury.

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<sup>12</sup> OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified. *See* Federal (FECA) Procedure Manual, Part 2 -- Claim, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010). *See C.K.*, Docket No. 09-2371 (issued August 18, 2010); *see also D.F.*, Docket No. 15-0664 (issued January 8, 2016).

<sup>13</sup> *Supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 30, 2015 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 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