

ISSUE

The issue is whether appellant has established permanent impairment for more than five percent permanent impairment of her left leg, for which she received a schedule award.

On appeal, appellant contends that her treating physician determined a greater degree of permanent impairment.

FACTUAL HISTORY

On April 25, 2011 appellant, then a 27-year-old transportation security officer (screener) filed a traumatic injury claim (Form CA-1) alleging that on April 10, 2011, while lifting a lot of heavy objects in a short amount of time, she suffered lower back pain/left leg pain. On May 31, 2011 OWCP accepted her claim for sprain of the lumbar region of the back. It subsequently accepted appellant's claim for disc herniation at L4-5, lumbosacral radiculopathy, and acquired left foot drop. OWCP paid intermittent compensation benefits until March 10, 2013, when she began receiving total disability benefits on the periodic rolls.

In a December 3, 2014 report, Dr. James L. Chappuis, appellant's treating Board-certified orthopedic surgeon, noted that appellant was status post lumbar fusion L3 to S1 and had chronic L5 radiculopathy on the left with greatly improving left muscular weakness and resolved foot drop. He noted that appellant continued to complain of back pain and had occasional numbness that traveled from her left knee to her left foot. Dr. Chappuis noted that appellant had 5/5 strength in all muscles of her lower extremities with the exception of 4+/5 strength in her left peroneus. He further indicated that appellant had normal gait and was able to dorsiflex her foot with relative ease. Dr. Chappuis opined that appellant was at maximum medical improvement following her recovery from her lumbar fusion surgery and that pursuant to the fifth edition of the A.M.A., *Guides*, she had a permanent partial disability rating of 20 percent.

On January 13, 2015 appellant filed a claim for a schedule award (Form CA-7).

On March 12, 2015 OWCP asked its medical adviser to evaluate appellant's permanent impairment. OWCP's medical adviser responded on March 13, 2015 that appellant had zero percent impairment of her upper extremities and her right lower extremity. He noted that appellant had chronic low back pain and left leg pain from her accepted employment injury, and that imaging confirmed lumbar disc herniation at L3-4, L4-5, and L5-S1. The medical adviser also noted an interbody fusion L3-4, L4-5, and L5-S1, with decompression spinal canal and neuroforamen and instrumental fusion L3-S1 performed on March 12, 2013. He stated that based on *The Guides Newsletter*, July/August 2009, page 6, Table 2, mild motor deficit of the L5 nerve root equaled five percent permanent impairment of the left leg.⁴ The medical adviser noted that no adjustment was made for functional history or clinical studies.

By decision dated April 3, 2015, OWCP issued a schedule award for five percent permanent impairment of the left leg.

⁴ Specifically, the medical adviser referred to the American Medical Association (A.M.A.) *The Guides Newsletter*, July/August 2009 edition.

LEGAL PRECEDENT

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proof to establish that the condition for which a schedule award is sought is causally related to his or her employment.⁵

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.⁶ 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.⁷ The A.M.A., *Guides*, has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁸ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.⁹

Although the A.M.A., *Guides* include guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under FECA for injury to the spine.¹⁰ 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 schedule 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.¹¹

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairment of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter*, July/August 2009, offers an approach to rating spinal nerve impairments consistent with sixth edition methodology.¹²

⁵ *Veronica Williams*, 56 ECAB 367 (2005).

⁶ 5 U.S.C. § 8107.

⁷ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁸ 20 C.F.R. § 10.404.

⁹ 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).

¹⁰ *Pamela J. Darling*, 49 ECAB 286 (1998).

¹¹ *Thomas J. Englehart*, 50 ECAB 319 (1999).

¹² *L.J.*, Docket No. 10-1263 (issued March 3, 2011).

OWCP has adopted this approach for rating impairment to the upper or lower extremities caused by a spinal injury.¹³

An opinion on permanent impairment is of limited probative value if it is not derived in accordance with the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses.¹⁴

In some instances, OWCP's medical adviser's opinion can constitute the weight of the medical evidence. This occurs in schedule award cases where an opinion on the percentage of permanent impairment and a description of physical findings is on the file from an examining physician, but the percentage estimate by the physician is not based on the A.M.A., *Guides*. In this instance, a detailed opinion by the medical adviser may constitute the weight of the medical evidence.¹⁵

ANALYSIS

OWCP accepted appellant's claim for sprain of the lumbar region of the back, disc herniation at L4-5, lumbosacral radiculopathy, and acquired left foot drop. On January 13, 2015 OWCP issued a schedule award for five percent permanent impairment of appellant's left leg.

OWCP determined that appellant had five percent permanent impairment of her left leg based on the opinion of OWCP's medical adviser. The medical adviser reviewed the medical evidence of record, including the reports of Dr. Chappuis, and determined that appellant did well following her surgery, but she had chronic residuals of left L5 radiculopathy with impairment for weakness of the left peroneus. He applied the *The Guides Newsletter* interpreting the sixth edition of the A.M.A., *Guides*, and noted that pursuant to Table 2, appellant's residuals could be described as mild motor deficit of the L5 nerve root which equaled five percent impairment of the left lower extremity. The medical adviser noted that no adjustments were made for functional history or clinical studies. Accordingly, he provided a rationalized opinion that properly applied the sixth edition of the A.M.A., *Guides* and determined that appellant had five percent permanent impairment of her left leg.

Appellant argues that her treating physician found that she was entitled to a greater schedule award. Dr. Chappuis, in a December 3, 2014 report, determined that appellant was entitled to a schedule award based on a permanent partial disability rating of 20 percent pursuant to the fifth edition of the A.M.A., *Guides*. Initially, the Board notes that the calculations of Dr. Chappuis under the fifth edition of the A.M.A., *Guides* are irrelevant as the sixth edition of the A.M.A., *Guides* was the appropriate edition of the A.M.A., *Guides* to apply effective May 1, 2009.¹⁶ Dr. Chappuis did not provide any explanation as to how he arrived at the 20

¹³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

¹⁴ *R.L.*, Docket No. 14-1479 (issued October 28, 2014).

¹⁵ *A.A.*, Docket No. 15-0898 (issued July 28, 2015).

¹⁶ *See supra* note 8; *see also D.M.*, Docket No. 13-2073 (issued March 18, 2014).

percent impairment figure through application of the A.M.A., *Guides*. The Board also notes that FECA does not authorize the payment of schedule awards for the permanent impairment of the whole person.¹⁷

Appellant argues on appeal that her treating physician later evaluated her under the sixth edition of the A.M.A., *Guides*. There was no probative medical evidence of record at the time of the April 3, 2015 schedule award decision, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant had more than five percent permanent impairment of his left leg. Accordingly, appellant has not established that she is entitled to a schedule award greater than that received.

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 did not establish more than five percent permanent impairment of her left leg.

ORDER

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

Issued: February 22, 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

¹⁷ *Y.M.*, Docket No. 13-1626 (issued November 13, 2013).