

September 28, 2011 and did not return. By decision dated November 18, 2011, OWCP accepted the claim for sprain of back, lumbar region. Appellant received wage-loss compensation benefits on the supplemental rolls from November 14, 2011 to March 23, 2012, and on the periodic rolls commencing March 24, 2012. By decision dated November 8, 2013, OWCP expanded the claim to include the acceptance of an aggravation of preexisting lumbar spondylolisthesis at L4-5.

Following her injury, appellant sought treatment with Dr. Robert B. McBride, a Board-certified orthopedic surgeon. In a March 12, 2015 medical report, Dr. McBride reported that appellant complained of continued back pain. He noted that two radiographs of the lumbar spine were ordered which revealed moderate degenerative disc disease and spondylosis throughout the lumbar spine. Dr. McBride diagnosed lumbago, moderate degenerative disc disease spondylosis, and left L4 radiculitis.

On October 15, 2015 appellant filed a claim for a schedule award (Form CA-7).

By letter dated October 27, 2015, OWCP requested that appellant submit a report from her attending physician addressing her work-related condition, the date of maximum medical improvement (MMI), objective findings, subjective complaints, and an impairment rating rendered according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*).² Appellant was afforded 30 days to provide the requested information. She did not respond.

By decision dated November 30, 2015, OWCP denied appellant's claim for a schedule award as the evidence of record was insufficient to establish permanent impairment to a scheduled member or function of the body causally related to her employment injuries.

On December 4, 2015 appellant requested an oral hearing before an OWCP hearing representative.

In support of her claim, appellant submitted a November 5, 2015 medical report from Dr. McBride. Dr. McBride reported that appellant presented for follow up of back pain from a September 15, 2011 employment injury and also suffered a right proximal humeral and clavicular fracture in April 2015. He provided findings on physical examination and reviewed a February 24, 2012 magnetic resonance imaging (MRI) scan of the lumbar spine which showed degenerative changes of L4-5 facet causing grade 1 anterolisthesis and a mild degree of central canal narrowing. Dr. McBride noted moderate decreased range of motion of the lumbar spine, tenderness across the lower lumbar spine at L4-5, L5-S1 with sensation intact. With respect to the lower extremities, he noted that the extensor hallucis longus (EHL) and anterior tibialis appeared to be functioning bilaterally, peroneal intact, sensation intact, vascular intact, and skin intact. Dr. McBride diagnosed severe facet arthrosis at L4-5 with grade 1 anterolisthesis, right sciatica, and moderate stenosis from facet degeneration. He reported that appellant appeared to have reached MMI. Dr. McBride opined that she had eight percent permanent impairment of her lumbar spine and released her from treatment.

² A.M.A., *Guides* (6th ed. 2009).

A hearing was held on August 12, 2016 where appellant testified that she continued to suffer from her work-related injuries. The hearing representative informed her that Dr. McBride's November 5, 2015 medical report was received which provided eight percent permanent impairment of the lumbar spine, but that FECA did not allow for permanent impairment ratings of the back without evidence of extremity impairment. Appellant was instructed on the evidence required to establish her schedule award claim and the record was held open for 30 days.

Following the hearing, the only medical report received was an August 30, 2016 report from Dr. McBride. Dr. McBride reported that appellant complained of bilateral leg pain from an April 2016 injury when she was lifting a 70-pound tray of magazines and twisted her legs. He diagnosed right leg neuropathic pain, secondary to anterolisthesis and stenosis at L4-5. Dr. McBride further noted that her disability rating remained the same.

By decision dated October 25, 2016, OWCP's hearing representative affirmed the November 30, 2015 decision denying appellant's claim for a schedule award as the evidence of record was insufficient to establish permanent impairment to a member or function of the body resulting from the employment injuries.

LEGAL PRECEDENT

The schedule award provisions of FECA 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.³ 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.⁴

It is the claimant's burden of proof to establish a permanent impairment of the scheduled member or function of the body as a result of any employment injury.⁵ OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.⁶

³ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

⁴ *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

⁵ *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (February 2013).

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.⁷ 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.⁸

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment.⁹ For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP procedures indicate that *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment using the sixth edition (July/August 2009) is to be applied.¹⁰ FECA approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities.¹¹

ANALYSIS

OWCP accepted appellant's claim for sprain of back lumbar region and aggravation of preexisting lumbar spondylolisthesis at L4-5. However, it has denied her claim for a schedule award. The Board finds that appellant has not submitted sufficient evidence to establish that, as a result of her employment injury, she sustained permanent impairment to a scheduled member such that she would be entitled to a schedule award.¹²

The only evidence received in support of appellant's schedule award claim was Dr. McBride's November 5, 2015 medical report. In his November 5, 2015 report, Dr. McBride diagnosed severe facet arthrosis at L4-5 with grade 1 anterolisthesis, right sciatica, and moderate stenosis from facet degeneration. He reported that appellant had reached MMI and opined that she had eight percent permanent impairment of her lumbar spine. In his August 30, 2016 report, Dr. McBride noted that appellant's disability rating remained unchanged.

Dr. McBride determined that appellant had eight percent permanent impairment of the lumbar spine. As noted, the sixth edition of the A.M.A., *Guides* does not provide for a schedule award for injury to the spine.¹³ However, impairment of a scheduled member of the upper or

⁷ *Pamela J. Darling*, 49 ECAB 286 (1998).

⁸ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

¹⁰ See *G.N.*, Docket No. 10-0850 (issued November 12, 2010); see also Federal (FECA) Procedure Manual, *id.* at Chapter 3.700, Exhibit 1, note 9 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

¹¹ *Supra* note 6 at 2.808.5c(3).

¹² *W.R.*, Docket No. 13-0492 (issued June 26, 2013).

¹³ *W.D.*, Docket No. 10-0274 (issued September 3, 2010).

lower extremities is payable under FECA, if it originates from the spine.¹⁴ The approach of rating impairment of the upper or lower extremities caused by a spinal injury is provided in section 3.700 of OWCP procedures, which memorializes proposed tables as outlined in a July/August 2009, *The Guides Newsletter*.¹⁵ The Board finds that Dr. McBride did not reference or provide an evaluation in accordance with the July/August 2009, *The Guides Newsletter*.¹⁶ Dr. McBride did not rate appellant's impairment pursuant to *The Guides Newsletter*, and his rating is therefore insufficient to establish permanent impairment warranting a schedule award due to her accepted lumbar injuries.¹⁷ Moreover, his November 5, 2015 report indicated that physical examination revealed no significant problems to the lower extremities with normal sensory and motor findings.¹⁸ The medical evidence must include a description of any physical impairment in sufficient detail so that the claims examiner and others reviewing the file would be able to clearly visualize the impairment with its resulting restrictions and limitations.¹⁹ Dr. McBride's rating, therefore, is insufficient to establish that appellant is entitled to a schedule award of the lower extremities due to the accepted conditions of sprain of back lumbar region and aggravation of preexisting lumbar spondylolisthesis at L4-5.

Dr. McBride's subsequent August 30, 2016 medical report also fails to establish appellant's claim for a schedule award. He reported an April 2016 bilateral leg injury when appellant was lifting a 70-pound tray of magazines and twisted her legs. Dr. McBride failed to rate permanent impairment pertaining to the lower extremities and noted that appellant's disability rating remained unchanged. Thus, the record does not provide any medical opinion finding that appellant sustained, as a result of her employment injury, permanent impairment to a scheduled member such that she would be entitled to a schedule award.²⁰

By letter dated October 27, 2015, OWCP informed appellant of the type of evidence necessary to establish her schedule award claim and specifically requested that she submit an impairment evaluation from her attending physician in accordance with the sixth edition of the A.M.A., *Guides*. Appellant did not submit such evidence and thus has failed to meet her burden of proof.²¹

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.

¹⁴ *K.H.*, Docket No. 09-0341 (issued December 30, 2009).

¹⁵ *Supra* note 10.

¹⁶ *J.C.*, Docket No. 15-1780 (issued March 17, 2016).

¹⁷ *E.D.*, Docket No. 10-0967 (issued January 7, 2011).

¹⁸ *L.W.*, Docket No. 12-1613 (issued February 19, 2013).

¹⁹ *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

²⁰ *G.F.*, Docket No. 16-0997 (issued November 15, 2016).

²¹ *V.W.*, Docket No. 09-2026 (issued February 16, 2010); *L.F.*, Docket No. 10-0343 (issued November 29, 2010).

CONCLUSION

The Board finds that appellant has not established a permanent impairment of a scheduled member for purposes of a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated October 25, 2016 is affirmed.

Issued: August 25, 2017
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