

container for a limited-duty clerk. However, the safety latch was not in a proper position and she had to release the door and lift it a second time. Appellant explained that she then felt a pull in her neck and back. She did not stop work and first received medical care on May 14, 2014.

By decision dated September 26, 2014, OWCP accepted the claim for sprain of neck, sprain of back thoracic region, and sprain of back lumbar region.

In an August 18, 2015 medical report, Dr. San Joaquin, Board-certified in family medicine, provided a history of injury, review of prior medical reports, and findings on physical examination. He diagnosed myofascial strain of the cervical spine, lumbar spine sprain/strain, and cervical spine disc extrusion. Dr. Joaquin determined that appellant had reached maximum medical improvement (MMI) without surgery and her condition was permanent and stationary. In accordance with Chapter 15, Table 15-6 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), he opined that appellant had zero percent whole body impairment based on cervical category 1.

On November 25, 2016 appellant filed a claim for a schedule award (Form CA-7).

By letter dated November 30, 2016, OWCP requested that appellant submit a report from her attending physician addressing her work-related condition, the date of MMI, objective findings, and subjective complaints. It also advised that the medical report should provide an impairment rating rendered according to the sixth edition of the A.M.A., *Guides*.² Appellant was afforded 30 days to provide the requested information. She did not respond.

By decision dated November 30, 2016, OWCP denied appellant's claim for a schedule award as the evidence of record was insufficient to establish that she sustained permanent impairment to a scheduled member or function of the body.

LEGAL PRECEDENT

The schedule award provision 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

² A.M.A., *Guides* (2009).

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).

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.⁵ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.⁶

It is the claimant's burden of proof to establish that he or she has sustained permanent impairment of the scheduled member or function as a result of any employment injury⁷. 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*.⁸

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.⁹ 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.¹⁰

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment.¹¹ 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.¹² FECA approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities.¹³

⁵ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (February 2013). CAH: cannot remember, but shouldn't this be 808.5a?

⁶ *Isidoro Rivera*, 12 ECAB 348 (1961).

⁷ *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁸ Federal Procedure Manual, *supra* note 5 at Chapter 2.808.5 (February 2013).

⁹ *Pamela J. Darling*, 49 ECAB 286 (1998).

¹⁰ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

¹¹ Federal Procedure Manual *supra* note 5 at Chapter 3.700, Exhibit 4 (January 2010).

¹² See *G.N.*, Docket No. 10-850 (issued November 12, 2010); see also *id.* at Chapter 3.700, Exhibit 1, note 5 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

¹³ *Supra* note 8 at Chapter 2.808.5c(3).

ANALYSIS

OWCP accepted appellant's claim for sprain of neck, sprain of back thoracic region, and sprain of back lumbar region. The Board notes that a schedule award is not payable under FECA for injury to the spine¹⁴ or based on a whole person permanent impairment.¹⁵ However, 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.¹⁶ The issue is whether appellant sustained permanent impairment as a result of her employment-related work injuries. The Board finds that appellant has not submitted sufficient evidence to establish that, as a result of her employment injury, she sustained any permanent impairment to a scheduled member such that she would be entitled to a schedule award.¹⁷

The only evidence received in support of appellant's schedule award claim was an August 18, 2015 medical report from Dr. Joaquin. The Board finds that Dr. Joaquin's report does not support appellant's schedule award claim.

While Dr. Joaquin determined that appellant had reached MMI, he opined that she sustained zero percent whole body impairment. There is no statutory basis for the payment of a schedule award for whole body impairment under FECA. Payment is authorized only for the permanent impairment of specified members, organs, or functions of the body.¹⁸ The Board further notes that Dr. Joaquin improperly utilized the fifth edition of the A.M.A., *Guides* when providing his impairment rating. On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of OWCP should reflect use of the sixth edition of the A.M.A., *Guides*.¹⁹ The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment.²⁰ 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.²¹

Appellant has not submitted sufficient evidence to establish that, as a result of her employment injury, she sustained any permanent impairment to a scheduled member warranting a schedule award. By letter dated November 30, 2016, OWCP informed her of the type of evidence necessary to establish her schedule award claim and specifically requested that she

¹⁴ *Pamela J. Darling*, 49 ECAB 286 (1998).

¹⁵ *N.M.*, 58 ECAB 273 (2007).

¹⁶ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

¹⁷ *W.R.*, Docket No. 13-492 (issued June 26, 2013).

¹⁸ *Tania R. Keka*, 55 ECAB 354 (2004).

¹⁹ *Supra* note 5.

²⁰ Federal Procedure Manual *supra* note 5 at Chapter 3.700, Exhibit 4 (January 2010).

²¹ *See supra* note 12.

submit an impairment evaluation from her attending physician in accordance with the sixth edition of the A.M.A., *Guides*. Appellant did not respond. It is appellant's burden of proof to establish permanent impairment of a scheduled member as a result of an employment injury.²² The medical evidence of record 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.²³ As appellant did not submit such evidence, OWCP properly denied her schedule award claim.²⁴

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 established that she is entitled to a schedule award.

²² *Supra* note 7.

²³ *See A.L.*, Docket No. 08-1730 (issued March 16, 2009).

²⁴ *V.W.*, Docket No. 09-2026 (issued February 16, 2010); *L.F.*, Docket No. 10-343 (issued November 29, 2010).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated January 10, 2017 is affirmed.

Issued: July 19, 2017
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board