



burden of proof to establish permanent impairment of a scheduled member of function or the body, entitling him to a schedule award.

### **FACTUAL HISTORY**

On July 16, 2008 appellant, then a 53-year-old materials handler, filed a traumatic injury claim (Form CA-1) alleging that, on July 15, 2008, he injured his middle and lower back when moving a box from a cart on the floor. OWCP accepted the claim for thoracic sprain and thoracic neuritis. Following his injury, appellant performed limited-duty employment.

An official position description for the job of materials handler indicated that it required frequent lifting and carrying of up to 40 pounds and the potential for lifting “greater weights with assistance.”

In a report dated August 17, 2015, Dr. Maciej T. Charczuk, a Board-certified physiatrist, diagnosed chronic middle back pain, chronic thoracic sprain/strain, myofascial pain syndrome, and degenerative joint disease. He noted that appellant continued to perform modified-duty work.

OWCP, on October 28, 2016, referred appellant to Dr. Robert F. Draper, Jr., a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated December 19, 2016, Dr. Draper reviewed appellant’s history of injury and the medical evidence of record. He measured range of motion of the lumbar spine and found a negative straight leg raise test bilaterally. Dr. Draper further found full motor function and sensation of the lower extremities. He diagnosed thoracic strain and neuritis. Dr. Draper opined that appellant could perform medium level employment lifting no more than 75 pounds occasionally and 50 pounds frequently.

Dr. Draper, in a supplemental report dated January 12, 2017, advised that appellant had no additional diagnoses other than the conditions accepted by OWCP.

By letter dated May 8, 2017, the employing establishment informed appellant that the medical evidence from Dr. Draper indicated that he could perform lifting, pushing, and pulling up to 50 pounds frequently and 75 pounds occasionally. It noted that these restrictions were within the physical requirements of the position of materials handler and offered him his date-of-injury position.

On May 16, 2017 the employing establishment clarified that the offered position was for full-time work in appellant’s date-of-injury position. It noted that the official position description of materials handler required frequent lifting and carrying of up to 40 pounds and the lifting of greater weight with assistance. The employing establishment advised appellant that he could perform the full duties of his position “while adhering to the medical restrictions provided by Dr. Draper.”

In a progress report dated June 12, 2017, Dr. Bruce S. Cohick, Board-certified in family medicine, related that appellant described “a history of chronic mid back pain in the area of T10-11 since July 1, 2008. The history as related by [appellant] is that his was secondary to a work[-] related injury. It started while he was lifting at work.” Dr. Cohick noted that the employing

establishment had offered appellant a position that would require lifting up to 50 pounds. He diagnosed chronic thoracic back pain secondary to an employment injury. Dr. Cohick related, “I do not feel [appellant] would be capable of performing regular duties, especially he could not pick up 50 pounds from the floor.”

On August 14, 2017 Dr. Brian C. Quirk, Board-certified in family medicine, obtained a history of appellant performing modified employment after lifting a heavy object while at work in 2008. He diagnosed chronic parathoracic strain and indicated that he had evaluated him for an employment injury. Dr. Quirk advised that appellant should continue with his current restrictions.

Appellant, on November 21, 2017, filed a claim for a schedule award (Form CA-7).

A December 4, 2017 telephone memorandum (Form CA-110), documents that the employing establishment telephoned OWCP and advised that it had accommodated appellant with a limited-duty job after his injury. It was now offering him a position in his usual employment based on the findings of the second opinion physician.

OWCP, on December 7, 2017, notified appellant of its proposed termination of his wage-loss compensation as the evidence established that he no longer had an employment-related disability causally related to his July 15, 2008 employment injury.

By decision dated February 13, 2018, OWCP terminated appellant’s entitlement to wage-loss compensation, effective that date. It found that Dr. Draper’s opinion represented the weight of the evidence and established that he had no further disability due to his July 15, 2008 employment injury. OWCP advised appellant that his claim remained open for medical treatment.

On February 15, 2018 OWCP requested that appellant submit an impairment evaluation from his attending physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>3</sup> addressing whether he had reached maximum medical improvement (MMI) and the extent of any permanent impairment.

Appellant’s union representative, on March 12, 2018, noted that he had retired on December 31, 2017 and was not claiming wage-loss compensation. He questioned why he needed to submit information in support of a schedule award determination given that OWCP had Dr. Draper’s opinion.

In a report dated March 2, 2018, Dr. Quirk evaluated appellant for pain in his thoracic spine that had begun after a 2008 employment injury. He noted that he had retired on December 31, 2017, and needed documentation that he had reached MMI. Dr. Quirk found a negative straight leg raise and full lower extremity strength. He diagnosed chronic lumbar thoracic pain. Dr. Quirk advised that he did not have the qualifications necessary to rate the percentage of appellant’s disability.

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

By decision dated June 26, 2018, OWCP denied appellant's schedule award claim. It found that he had not submitted medical evidence establishing permanent impairment of a scheduled member or function of the body entitling him to a schedule award.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>4</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective February 13, 2018.

OWCP accepted that appellant sustained thoracic sprain and thoracic neuritis due to a July 15, 2008 employment injury. Appellant performed limited-duty employment following his injury. OWCP terminated his entitlement to wage-loss compensation effective February 13, 2018 based on the opinion of Dr. Draper, who provided a second opinion examination.

The Board finds that Dr. Draper's opinion is thorough and well-rationalized and thus constitutes the weight of the evidence establishing that appellant had no further disability due to his accepted employment injury after February 13, 2018.<sup>7</sup>

On December 19, 2016 Dr. Draper reviewed the history of injury and provided detailed findings on examination. He found full motor function and sensation of the lower extremities and a negative straight leg raise test bilaterally. Dr. Draper diagnosed thoracic strain and neuritis. He determined that appellant could work lifting no more than 75 pounds occasionally and 50 pounds frequently. Dr. Draper provided a thorough review of the factual and medical background and accurately summarized the relevant medical evidence. Moreover, he provided detailed findings on examination and reached conclusions regarding appellant's condition which comported with his findings.<sup>8</sup> Consequently, Dr. Draper's opinion is entitled to the weight of the evidence.<sup>9</sup> Appellant's official position description supports that the restrictions found by Dr. Draper were

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<sup>4</sup> *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

<sup>5</sup> *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

<sup>6</sup> *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

<sup>7</sup> *O.W.*, Docket No. 17-1881 (issued May 1, 2018).

<sup>8</sup> *S.P.*, Docket No. 16-0341 (issued November 7, 2016).

<sup>9</sup> *See S.W.*, Docket No. 17-0215 (issued September 19, 2017).

within those of his date-of-injury position. Thus, the evidence establishes that appellant had no further disability due to his employment injury.

The remaining evidence of record submitted prior to OWCP's termination of compensation is insufficient to show that appellant had continued disability due to his employment injury. On June 12, 2017 Dr. Cohick discussed his history of back pain at T10-11 beginning July 2008 after he had performed lifting at work. He diagnosed chronic thoracic pain due to an employment injury. Dr. Cohick opined that appellant could not perform his usual employment duties, which he found included lifting 50 pounds off the floor. While he provided the history of injury, he failed to specifically attribute his work restrictions to the accepted employment injury.<sup>10</sup> Further, Dr. Cohick indicated that appellant's position required lifting up to 50 pounds from the floor, which is not supported by the record. Medical opinions based on an incomplete or inaccurate history are of limited probative value.<sup>11</sup> Consequently, Dr. Cohick's opinion is of diminished probative value.<sup>12</sup>

Dr. Quirk, in a report dated August 14, 2017, discussed appellant's history of a 2008 employment injury after lifting a heavy object. He noted that he had performed modified employment after his injury. Dr. Quirk diagnosed chronic parathoracic strain and advised that he had evaluated appellant for an employment injury. He opined that he should continue working with the same restrictions. Dr. Quirk, however, did not provide adequate medical rationale explaining how the continued work restrictions were caused by the employment injury.<sup>13</sup> Medical conclusions unsupported by rationale are of little probative value.<sup>14</sup>

The Board finds that Dr. Draper's opinion represents the weight of the evidence and establishes that appellant has no further employment-related disability.<sup>15</sup> Consequently, OWCP properly terminated his entitlement to wage-loss compensation effective February 13, 2018.<sup>16</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

The schedule award provisions of FECA,<sup>17</sup> and its implementing federal regulations,<sup>18</sup> 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. However,

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<sup>10</sup> See *A.D.*, Docket No. 17-0793 (issued June 18, 2018).

<sup>11</sup> See *M.B.*, Docket No. 18-1182 (issued January 9, 2019).

<sup>12</sup> *K.L.*, Docket No. 17-2003 (issued April 16, 2018).

<sup>13</sup> *D.P.*, Docket No. 18-0038 (issued January 4, 2019).

<sup>14</sup> *Id.*

<sup>15</sup> *Supra* note 11.

<sup>16</sup> See *D.J.*, Docket No. 17-0327 (issued July 11, 2018).

<sup>17</sup> 5 U.S.C. § 8107.

<sup>18</sup> 20 C.F.R. § 10.404.

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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>19</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>20</sup>

A claimant has the burden of proof under FECA to establish permanent impairment of a scheduled member or function as a result of his or her employment injury entitling him or her to a schedule award.<sup>21</sup> Before the A.M.A., *Guides* can be utilized a description of impairment must be obtained from his or her 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, decrease 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.<sup>22</sup>

OWCP's procedures provide that, if a claimant has not submitted an impairment evaluation, it should request a detailed report that "includes history of clinical presentation, physical findings, functional history, clinical studies or objective tests, analysis of findings, and the appropriate impairment based on the most significant diagnosis, as well as a discussion of how the impairment rating was calculated."<sup>23</sup> If the claimant does not provide an impairment evaluation, "and there is no indication of permanent impairment in the medical evidence of file, the CE [claims examiner] may proceed with a formal denial of the award."<sup>24</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met his burden of proof to establish permanent impairment entitling him to a schedule award.

OWCP accepted that appellant sustained thoracic sprain and thoracic neuritis causally related to a July 15, 2008 employment injury. On November 21, 2017 appellant filed a schedule award claim. OWCP, on February 15, 2018, requested that he submit an impairment evaluation from his physician addressing the extent of any employment-related permanent impairment using the A.M.A., *Guides*.

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<sup>19</sup> *Id.* at § 10.404(a).

<sup>20</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>21</sup> *See I.T.*, Docket No. 18-1049 (issued December 31, 2018).

<sup>22</sup> *A.T.*, Docket No. 18-0864 (issued October 9, 2018).

<sup>23</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (March 2017).

<sup>24</sup> *Id.* at Chapter 2.808.6(c).

Dr. Quirk, in a report dated March 2, 2018, found that appellant had limited thoracic motion due to pain, a negative straight leg raise, and full strength in the lower extremity. He related that he did not have the qualifications to rate a percentage of disability.

As noted, appellant must submit an evaluation from a physician that includes a description of impairment 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.<sup>25</sup> He has failed to submit any medical evidence supporting that he sustained a permanent impairment due to his accepted employment injury and thus has not met his burden of proof.<sup>26</sup> Appellant requested that OWCP schedule a second opinion examination, and his attending physician declined to provide an impairment rating. However, as there was no indication of permanent impairment to a scheduled member or function in the record, OWCP properly denied his claim.<sup>27</sup>

On appeal appellant submitted a letter from his union steward noting that he underwent a functional capacity evaluation performed in April 15, 2009 and that he had submitted a report from his physician dated March 2, 2018. As discussed, however, he has the burden of proof to establish permanent impairment of a scheduled member or function of the body.<sup>28</sup> The April 15, 2009 functional capacity evaluation is stale medial evidence and cannot form the basis for a current impairment evaluation.<sup>29</sup> Dr. Quirk, in the March 2, 2018 report, declined to provide an impairment evaluation.

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 OWCP has met its burden of proof to terminate appellant's wage-loss compensation, effective February 13, 2018. The Board further finds that he has not met his burden of proof to establish permanent impairment of a scheduled member of function of the body entitling him to a schedule award.

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<sup>25</sup> See *B.V.*, Docket No. 17-0656 (issued March 13, 2018).

<sup>26</sup> See *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

<sup>27</sup> See *supra* note 23.

<sup>28</sup> *D.S.*, Docket No. 18-1140 (issued January 29, 2019).

<sup>29</sup> See *S.H.*, Docket No. 18-1297 (issued January 3, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 26 and February 13, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 6, 2019  
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