



## ISSUE

The issue is whether appellant has met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

## FACTUAL HISTORY

On February 20, 2007 appellant, then a 50-year-old diagnostic radiology technician, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2007 she injured her back when she caught a patient from falling while in the performance of duty. She stopped work on that date. On March 23, 2007 OWCP accepted the claim for lumbar and thoracic sprain and paid appellant compensation for intermittent disability and medical benefits on the supplemental rolls commencing July 20, 2017.

On November 23, 2010 appellant filed a claim for a schedule award (Form CA-7).

In a development letter dated December 7, 2010, OWCP informed appellant that additional medical evidence was necessary to establish her schedule award claim. It advised that she should submit a report from her treating physician which evaluated her permanent impairment pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup> OWCP afforded appellant 30 days to submit the necessary evidence.

By decision dated February 8, 2011, OWCP denied appellant's schedule award claim finding that the evidence of record was insufficient to establish permanent impairment to a scheduled member due to her accepted employment injury.

Based on the medical evidence of record, on November 16, 2011 OWCP expanded acceptance of appellant's claim to include lumbar disc herniations at L3-L5.

On December 27, 2016 appellant filed another claim for a schedule award (Form CA-7).

In a report dated January 4, 2017, Dr. Dennis Williams, Board-certified in physical medicine and rehabilitation, noted appellant's history, and examination findings. He diagnosed chronic pain due to trauma, lumbar degenerative disc disease, thoracic degenerative disc disease, lower leg joint pain, sacroiliitis, muscle spasm, and lumbar sprain. Dr. Williams indicated that regarding neurologic findings appellant had normal gait, normal straight leg raising, normal motor strength, as well as intact sensation in both upper and lower extremities.

In a letter dated January 26, 2017, OWCP requested that appellant's treating physician, Dr. Williams, provide a report which evaluated her permanent impairment pursuant to the sixth edition of the A.M.A., *Guides*. It afforded him 30 days to submit the necessary evidence.

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

In a series of reports dated February 1, March 1 and 29, April 26, May 24, and June 21, 2017, Dr. Williams noted the previously mentioned diagnoses and examination findings, however, he did not provide a rating of permanent impairment.

By decision dated July 18, 2017, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish permanent impairment to a scheduled member or function of her body due to her accepted employment injury.

Following OWCP's decision, appellant submitted continuous medical reports from Dr. Williams dated July 19, August 16, September 13, October 18, November 15 and December 14, 2017, and January 17, February 14, March 12, April 9, May 7, June 4, July 11, August 6, and September 6, 2018. Dr. Williams again noted appellant's medical history, as well as normal neurologic examination findings, and related the previously aforementioned diagnoses without providing a rating of permanent impairment as requested.

In a report dated October 16, 2017, Dr. John B. Bieltz, an osteopathic physician Board-certified in orthopedic surgery, related that he had examined appellant.

On July 3, 2018 appellant requested reconsideration of OWCP's July 18, 2017 decision.

By decision dated October 1, 2018, OWCP denied modification of its July 18, 2017.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>4</sup> and its implementing federal regulations,<sup>5</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, 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>6</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>7</sup>

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, under FECA a schedule award is not payable for injury to the spine.<sup>8</sup> 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

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.* at § 10.404(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also id.* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>8</sup> *See B.W.*, Docket No. 18-1415 (issued March 8, 2019); *J.M.*, Docket No. 18-0856 (issued November 27, 2018); *Pamela J. Darling*, 49 ECAB 286 (1998).

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.<sup>9</sup>

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as an extremity impairment. The A.M.A., *Guides* has offered an alternative approach to rating spinal nerve impairments.<sup>10</sup> OWCP has adopted this approach for rating permanent impairment of the upper or lower extremities caused by a spinal injury, as provided in section 3.700 of its procedures, which memorializes proposed tables outlined in *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009) (*The Guides Newsletter*).<sup>11</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>12</sup> Before the A.M.A., *Guides* can be utilized, a description of the 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>13</sup>

OWCP's procedures provide that, if a claimant has not submitted a permanent impairment evaluation, it should request a detailed report that includes a discussion of how the impairment rating was calculated.<sup>14</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 claims examiner may proceed with a formal denial of the award.<sup>15</sup>

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<sup>9</sup> *J.M., id*; *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>10</sup> *R.B.*, Docket No. 17-1995 (issued August 13, 2018); *Rozella L. Skinner*, 37 ECAB 398 (1986).

<sup>11</sup> Federal (FECA) Procedure Manual, Chapter 3.700, Exhibit 1 (January 2010); *The Guides Newsletter* is included as Exhibit 4.

<sup>12</sup> *See I.T.*, Docket No. 18-1049 (issued December 31, 2018).

<sup>13</sup> *A.T.*, Docket No. 18-0864 (issued October 9, 2018).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (March 2017).

<sup>15</sup> *Id.* at Chapter 2.808.6(c).

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

In support of her schedule award claim, appellant submitted a series of medical reports from Dr. Williams. OWCP also received reports from Dr. Bieltz. Neither of these physicians addressed maximum medical improvement,<sup>16</sup> or described a permanent impairment resulting from a spinal nerve impairment to an extremity 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.<sup>17</sup> Although OWCP requested a medical opinion on the extent of appellant's permanent impairment, these physicians did not provide such a rating. The evidence submitted does not establish that appellant had a neurologic deficit consistent with radiculopathy, ratable pursuant to *The Guides Newsletter*. As the reports of record do not comport with the A.M.A., *Guides* or *The Guides Newsletter*, appellant has not submitted medical evidence supporting that she sustained permanent impairment due to her accepted employment injury.<sup>18</sup>

The Board finds that appellant has not met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

Appellant may request a schedule award or increased schedule award at any time based on evidence of new exposure, or medical evidence showing a progression of an employment-related condition resulting in permanent impairment or increased impairment.

## CONCLUSION

The Board finds that appellant has not met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

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<sup>16</sup> See *I.R.*, Docket No. 16-1796 (issued January 13, 2017).

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

<sup>18</sup> See *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 1, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2019  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board