



## **FACTUAL HISTORY**

On September 28, 2014 appellant, then a 48-year-old supervisor/letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 27, 2014 he sustained lower back and bilateral leg, knee, and foot injuries when a coworker drove off in vehicle as appellant was opening the back door to get inside while in the performance of duty.<sup>3</sup> OWCP accepted the claim for lumbar and neck sprains. Appellant stopped work on the date of injury, but returned to work on December 26, 2014. He stopped work again on February 6, 2015, and returned to light-duty work on July 5, 2016.

On March 12, 2019 appellant filed a claim for a schedule award (Form CA-7) alleging permanent impairment of his whole body, including his back, legs, and neck.

In a March 15, 2019 development letter, OWCP advised appellant that the evidence of record was insufficient to establish his schedule award claim as no medical evidence had been received. It indicated that his claim had been accepted for lumbar and neck sprains. OWCP requested that appellant provide a medical report from his attending physician which included a statement that the accepted condition had reached maximum medical improvement (MMI) and an impairment rating utilizing the appropriate portions of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>4</sup> OWCP explained that the *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment using the sixth edition (July/August 2009) (*The Guides Newsletter*) was to be used to rate spinal impairment. It afforded appellant 30 days to submit the necessary evidence.

On April 15, 2019 OWCP received a June 1, 2015 impairment rating from Dr. Ian D. Archibald, a Board-certified orthopedic surgeon, who diagnosed cervical, thoracic, and lumbar back injury with right leg radicular pain. Dr. Archibald found no major structural problems based on review of a magnetic resonance imaging (MRI) scan. Appellant reported episodes of right leg tingling, pain, numbness, and giving way, occasional neck problems, and back issues. Dr. Archibald opined that appellant's recovery had plateaued. Using the fifth edition of the A.M.A., *Guides*,<sup>5</sup> he determined that appellant had eight percent whole person impairment based on radicular complaints.

In an evaluation for permanent impairment form dated April 10, 2019, Dr. Archibald again found eight percent permanent impairment of appellant's back and noted that he had reached MMI.

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<sup>3</sup> OWCP assigned the present claim OWCP File No. xxxxxx326. Under appellant's claim in OWCP File No. xxxxxx269, OWCP accepted left lower and upper extremity conditions, neck and thoracic sprains, and a concussion due to a November 30, 2005 employment injury. On January 18, 2018 OWCP administratively combined the present claim with OWCP File No. xxxxxx269, with the latter serving as the master file.

<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>5</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001)

By decision dated May 31, 2019, OWCP denied appellant's schedule award claim, finding that he had not met his burden of proof to establish employment-related permanent impairment of a scheduled member or function of the body.

On July 10, 2019 appellant requested reconsideration and submitted additional medical evidence.

Dr. Archibald, in a July 29, 2015 report, determined that appellant had two percent permanent impairment of the lumbar spine. Using the sixth edition of the A.M.A., *Guides*, Table 17-4, Lumbar Spine Regional Grid,<sup>6</sup> Dr. Archibald explained that appellant had findings consistent with a chronic lumbar sprain/strain or diagnosis class of 1 which equaled two percent permanent impairment. Next, he assigned a class 3 for severe problems for functional history, a grade two for physical examination findings, and a zero grade modifier for clinical studies based on a normal MRI scan, resulting in no adjustment to the default value of two percent.

In a June 24, 2019 report, Dr. Archibald explained that he had provided an impairment rating for appellant's lumbar condition using the sixth edition of the A.M.A., *Guides* in 2015. Based on a review of OWCP's May 31, 2019 decision, which explained that FECA did not provide for permanent impairment for the spine, and that a schedule award must be based on a spinal nerve injury which affected the extremities, he concluded that appellant had no permanent impairment as there was no involvement of his lower extremities. Dr. Archibald related that he had explained these facts to appellant.

By decision dated August 15, 2019, OWCP denied modification of the May 31, 2019 decision.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>7</sup> and its implementing federal regulations,<sup>8</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>9</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>10</sup>

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<sup>6</sup> A.M.A., *Guides* 570.

<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> *Id.* at § 10.404(a).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

It is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of an employment injury.<sup>11</sup> OWCP's 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, 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*.<sup>12</sup>

Neither FECA nor its regulations provide for a schedule award for impairment to the back or to the body as a whole.<sup>13</sup> Furthermore, the back is specifically excluded from the definition of organ under FECA.<sup>14</sup> The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter* offers an approach to rating spinal nerve impairments consistent with sixth edition methodology. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures indicate that *The Guides Newsletter* is to be applied.<sup>15</sup> The Board has recognized the adoption of this methodology for rating extremity impairment, including the use of *The Guides Newsletter*, as proper in order to provide a uniform standard applicable to each claimant for a schedule award for extremity impairment originating in the spine.<sup>16</sup>

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 federal employment.<sup>17</sup>

### ANALYSIS

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

In support of his claim, appellant submitted reports from Dr. Archibald. Initially, Dr. Archibald attempted to rate appellant's whole body impairment or permanent impairment of appellant's lumbar spine. In a June 1, 2015 report, Dr. Archibald utilized the fifth edition of the A.M.A., *Guides* and opined that appellant had eight percent whole person permanent impairment. Whole person impairment ratings, however, are of no probative value as whole person permanent

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<sup>11</sup> *D.F.*, Docket No. 18-0730 (issued August 21, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>12</sup> *Supra* note 10 at Chapter 2.808.5 (March 2017); *see also B.J.*, Docket No. 19-0960 (issued October 7, 2019).

<sup>13</sup> *K.Y.*, Docket No. 18-0730 (issued August 21, 2019); *L.L.*, Docket No. 19-0214 (issued May 23, 2019); *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

<sup>14</sup> *See* 5 U.S.C. § 8101(19); *see also G.S.*, Docket No. 18-0827 (issued May 1, 2019); *Francesco C. Veneziana*, 48 ECAB 572 (1997).

<sup>15</sup> *Supra* note 10.

<sup>16</sup> *E.D.*, Docket No. 13-2024 (issued April 24, 2014); *D.S.*, Docket No. 13-2011 (issued February 18, 2014).

<sup>17</sup> *G.S.*, *supra* note 14; *Veronica Williams*, 56 ECAB 367 (2005).

impairment ratings are not permitted under FECA.<sup>18</sup> This report lacks probative value as he neither used the sixth edition of the A.M.A., *Guides* nor *The Guides Newsletter* in calculating appellant's permanent impairment.<sup>19</sup>

In a July 29, 2015 report, Dr. Archibald referred to the sixth edition of the A.M.A., *Guides*, Table 17-4 on page 470 to find a two percent permanent impairment of the lumbar spine. On an impairment rating form dated April 10, 2019, Dr. Archibald concluded that appellant had eight percent permanent impairment of his back. As previously noted neither FECA nor its regulations provide for a schedule award for impairment to the back.<sup>20</sup> Furthermore, the back is specifically excluded from the definition of organ under FECA.<sup>21</sup> Therefore, this report is also insufficient to establish appellant's schedule award claim.

In a June 24, 2019 report, Dr. Archibald found that appellant had no permanent impairment under FECA as there was no involvement of his lower extremities due to a spinal nerve impairment. As Dr. Archibald's report negates permanent impairment, it is insufficient to establish appellant's schedule award claim.<sup>22</sup>

As the medical evidence of record does not establish permanent impairment of a scheduled member or function of the body, in accordance with either the sixth edition of the A.M.A., *Guides* or *The Guides Newsletter*, appellant has not met his burden of proof to establish his schedule award claim.

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 his 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>18</sup> C.S., Docket No. 19-0851 (issued November 18, 2019); *Marilyn S. Freeland*, 57 ECAB 607 (2006).

<sup>19</sup> A.R., Docket No. 17-1504 (issued May 25, 2018).

<sup>20</sup> K.Y., Docket No. 18-0730 (issued August 21, 2019); L.L., Docket No. 19-0214 (issued May 23, 2019); N.D., 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004)

<sup>21</sup> See 5 U.S.C. § 8101(19); see also G.S., Docket No. 18-0827 (issued May 1, 2019); *Francesco C. Veneziana*, 48 ECAB 572 (1997).

<sup>22</sup> L.G., Docket No. 16-0792 (issued June 24, 2016) (the Board held that when a medical report finds no permanent impairment it is insufficient to establish a claim for a schedule award).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 15, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2020  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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