

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than one percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

FACTUAL HISTORY

This case has previously been before the Board on another issue.³ The facts and circumstances as set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On October 11, 2011 appellant, then a 52-year-old seasonal, intermittent customer service representative, filed a traumatic injury claim (Form CA-1) alleging that on October 7, 2011 she sustained neck and back injuries when she was involved in a motor vehicle accident while in travel duty status in Pennsylvania.⁴ Appellant stopped work and returned to full-time, limited duty on October 12, 2011. OWCP accepted her claim for neck sprain. It subsequently expanded acceptance of her claim to include aggravation of lumbar degenerative disc disease at L4-5 and L5-S1, aggravation of cervical degenerative disc disease at C5-6, aggravation of lumbar herniated disc at L4-5 and L5-S1, aggravation of cervical herniated disc at C4-5, and aggravation of left neuroforaminal stenosis.⁵ In March 2014 appellant's term appointment ended.

An electromyography and nerve conduction velocity (EMG/NCV) study performed on March 12, 2019 suggested the presence of left S1 radiculopathy.

In a September 18, 2019 impairment rating report, Dr. Joshua B. Macht, a Board-certified internist, indicated that appellant was seen for an impairment evaluation with regards to an October 7, 2011 motor vehicle accident, which caused injury to her head, neck, and back. He discussed the medical treatment that appellant had received, including surgery for C5 through C7 fusion in 2017. Dr. Macht recounted that appellant continued to complain of constant neck and back pain radiating throughout the bilateral upper extremities. Upon examination of appellant's lumbar spine, he observed tenderness about the lower lumbar spine and left lumbar paraspinal region and diminished sensation to light touch involving the left hand. Dr. Macht also noted diminished sensation involving the left lower leg and plantar aspect of the left foot. Motor strength of the upper and lower extremities were symmetric and intact. Dr. Macht provided range of motion (ROM) findings of appellant's back, neck, and bilateral shoulders. He discussed appellant's diagnostic testing and noted that a recent March 2019 EMG/NCV study showed no evidence of cervical radiculopathy. Dr. Macht reported diagnoses of aggravation of cervical herniated disc at C4-6 and cervical degenerative disc disease at C5-6, status post C5 through C7 fusion surgery, and aggravation of lumbar herniated discs and degenerative disc disease L4-5 and L5-S1.

³ Docket No. 16-1200 (issued June 5, 2017).

⁴ Appellant's official duty station was Vallejo, California.

⁵ OWCP paid appellant wage-loss compensation on the supplemental rolls from March 25 through December 14, 2013.

Dr. Macht referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)⁶ and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*) and indicated that, under Table 2 of *The Guides Newsletter*, the class of diagnosis (CDX) for mild sensory deficit in the left S1 distribution due to her lower back injury resulted in a class 1 impairment with a default value of one percent permanent impairment. He assigned a grade modifier for functional history (GMFH) of 1 due to her lower limb questionnaire and calculated that appellant had one percent permanent impairment of the left lower extremity. Dr. Macht also indicated that, since a recent EMG/NCV study showed no evidence of cervical radiculopathy, the only assignable impairment for appellant's accepted cervical injury would be due to her limited ROM of the shoulders. He reported that, according to Table 15-34, *Shoulder Range of Motion*, page 475, of the A.M.A., *Guides*, appellant had seven percent permanent impairment of each upper extremity. Dr. Macht assigned a GMFH of 3 on the right and a GMFH of 4 on the left due to her *QuickDASH* score. He reported that, based on rounding rules, appellant had eight percent permanent impairment of each upper extremity due to her bilateral symmetric shoulder ROM.

Dr. Macht also indicated that appellant had a history of bilateral carpal tunnel syndrome, moderate on the right and mild on the left, which was unrelated to her neck injury. He referred to Table 15-23, *Entrapment/Compression Neuropathy Impairment*, page 449, and indicated that appellant had a grade modifier for test findings of 1, grade modifier for history of 2, and grade modifier for physical findings of 1, which resulted in three percent permanent impairment of each upper extremity. Dr. Macht concluded that appellant had a total of 11 percent permanent impairment of each upper extremity for her bilateral carpal tunnel syndrome and loss of ROM of the shoulders and 1 percent left lower extremity permanent impairment as a result of her lower back injury. He noted that appellant had reached maximum medical improvement (MMI) as of September 5, 2019.

On March 13, 2020 appellant filed a claim for a schedule award (Form CA-7).

OWCP referred appellant, along with a statement of accepted facts (SOAF), to Dr. Michael Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), for review as to whether appellant sustained permanent impairment as a result of her accepted October 7, 2011 employment injury. In an April 11, 2020 report, Dr. Katz noted that appellant's claim was accepted for neck sprain, degeneration of lumbar and cervical disc disease, displacement of L4 disc and displacement of cervical intervertebral disc without myelopathy, and spinal stenosis. He indicated that he reviewed Dr. Macht's September 18, 2019 impairment rating report and that he agreed with the impairment rating of one percent permanent impairment of the left lower extremity for mild sensory deficit at S1. Dr. Katz utilized Table 2 of *The Guides Newsletter* and noted that the CDX for mild sensory deficit at S1 resulted in a class 1 impairment with a default value of one percent permanent impairment. He assigned a GMFH of 1 and a grade modifier for clinical studies (GMCS) of 1. Dr. Katz utilized the net adjustment formula (GMFH - CDX) + (GMCS - CDX) = (1-1) + (1-1) = 0, which resulted in no adjustment for a total of one percent permanent impairment of the left lower extremity.

⁶ A.M.A., *Guides* (6th ed. 2009).

Regarding permanent impairment of appellant's upper extremities, Dr. Katz indicated that he disagreed with Dr. Macht's determination of 11 percent permanent impairment of each upper extremity. He noted that Dr. Macht's bilateral upper extremity permanent impairment was based on loss of shoulder ROM and bilateral carpal tunnel syndrome, which were not directly related to appellant's spinal conditions and were not accepted conditions. Dr. Katz reported that appellant had no motor or sensory deficits at C5, C6, C7, C8, and T1 on the left or right upper extremities, which resulted in class 0 or no ratable permanent impairment. He noted a date of MMI of September 5, 2019.

By decision dated June 10, 2020, OWCP granted appellant a schedule award for one percent permanent impairment of the left lower extremity. The period of the award ran for 2.8 weeks from September 5 to 25, 2019 and was based on the April 11, 2020 DMA report.

On June 19, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on September 17, 2020.

Appellant submitted reports dated April 21 through June 30, 2020 by Dr. Matthew Johnson, an osteopath who specializes in pain management, regarding her continued treatment for her cervical and lumbar conditions.

By decision dated November 30, 2020, OWCP's hearing representative affirmed the June 10, 2020 decision, finding that appellant had no greater than one percent permanent impairment of the left lower extremity, for which she previously received schedule award.

LEGAL PRECEDENT

The schedule award provisions of FECA⁷ and its implementing regulations⁸ 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. FECA, however, does not specify the manner in which the percentage of loss of a member 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 and the Board has concurred in such adoption.⁹ As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.¹⁰

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ *Id.* at § 10.404 (a); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

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

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health.¹¹ Under the sixth edition, for lower extremity impairments, the evaluator identifies the impairment of the CDX, which is then adjusted by GMFH, grade modifier for physical examination (GMPE), and GMCS.¹² The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹³ The standards for evaluation of permanent impairment of an extremity under the A.M.A., *Guides* are based on all factors that prevent a limb from functioning normally, such as pain, sensory deficit, and loss of strength.¹⁴

Neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.¹⁵ Furthermore, the back is specifically excluded from the definition of an organ under FECA.¹⁶ 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 procedures indicate that the July/August 2009 edition of *The Guides Newsletter* is to be applied.¹⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than one percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

Appellant submitted a September 18, 2019 report from Dr. Macht to support her claim for a schedule award. Dr. Macht reviewed appellant's history and conducted an examination. He determined that, for mild sensory deficit in the left S1 distribution due to her lower back injury, appellant had one percent permanent impairment of the left lower extremity according to Table 2 of *The Guides Newsletter*. Dr. Macht explained that the only assignable impairment for appellant's accepted cervical injury resulted from loss of bilateral shoulder ROM. Utilizing the ROM methodology under Table 15-34, page 475, of the A.M.A., *Guides*, he found that appellant had

¹¹ A.M.A., *Guides* 3, section 1.3, *The International Classification of Functioning, Disability, and Health (ICF): A Contemporary Model of Disablement*.

¹² *Id.* at 493-556.

¹³ *Id.* at 521.

¹⁴ *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *E.B.*, Docket No. 10-0670 (issued October 5, 2010); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹⁵ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

¹⁶ *See* 5 U.S.C. § 8101(19); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

¹⁷ *Supra* note 10 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

seven percent permanent impairment of each upper extremity. Dr. Macht assigned grade modifiers, which yielded eight percent permanent impairment of each upper extremity. He also opined that, under Table 15-23, page 449, appellant had 3 percent permanent impairment of each upper extremity due to bilateral carpal tunnel syndrome for a total of 11 percent permanent impairment of each upper extremity.

OWCP properly referred the evidence of record to Dr. Katz, serving as the DMA. In his April 11, 2020 report, Dr. Katz concurred with Dr. Macht's finding that appellant had one percent permanent impairment of the left lower extremity for mild left sensory deficit at S1. However, he disagreed with Dr. Macht's 11 percent permanent impairment of each upper extremity since it was based on conditions that were not accepted conditions. Dr. Katz correctly explained that impairments for spinal conditions were assessed based on the presence of spinal nerve impairment and noted that appellant's bilateral carpal tunnel syndrome and loss of shoulder ROM were not causally related to appellant's accepted lumbar and cervical injuries.

The Board finds that the DMA correctly applied the appropriate tables and grading schedules of the A.M.A., *Guides* and *The Guides Newsletter* to find that appellant had one percent permanent impairment of the left lower extremity.¹⁸ He utilized Table 2 of *The Guides Newsletter* and noted that the CDX for mild sensory deficit at S1 resulted in a class 1 impairment. Dr. Katz assigned grade modifiers and utilized the net adjustment formula for a total of one percent permanent impairment of the left lower extremity. Dr. Katz' report is detailed, well-rationalized, and based on a proper factual background, and thus his opinion represents the weight of the medical evidence.¹⁹ As such, the Board finds that appellant has not met her burden of proof to establish greater than one percent left lower extremity permanent impairment that was previously awarded.

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 met her burden of proof to establish greater than one percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

¹⁸ See *T.B.*, Docket No. 20-0642 (issued September 30, 2020).

¹⁹ See *V.S.*, Docket No. 19-1679 (issued July 8, 2020); *T.F.*, Docket No. 19-0157 (issued April 21, 2020).

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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