



## 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

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 18, 2017 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 9, 2017 she strained her lower back when a step broke while she was walking down to deliver mail while in the performance of duty. She stopped work on September 12, 2017. OWCP accepted appellant's claim for lumbar strain and left leg contusion. It paid her wage-loss compensation on the supplemental rolls, effective November 10, 2017. Appellant returned to full duty on March 29, 2018.

On May 16, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated May 31, 2018, OWCP requested that appellant's treating physician provide a medical report, which included an impairment rating utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>4</sup> and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*). It afforded her 30 days to submit the requested information.

By decision dated September 5, 2018, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

On September 14, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted a report dated September 14, 2018 by Dr. Catherine Watkins Campbell, a family practitioner, who reviewed appellant's history of injury and reported that her initial clinical impression was contusion of lower back and pelvis, x-ray contusion of right thigh, and strata muscle fascia and tendon of the lower back strain. On physical examination, Dr. Watkins Campbell observed normal lumbosacral range of motion and normal reflexes and motor examination in the lower extremities. She reported mild gluteal tenderness and spasm with trigger points in the right gluteal area. Dr. Watkins Campbell explained that, since appellant had no complaints regarding her left leg contusion, she would rate impairment based on the soft tissue

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<sup>3</sup> Docket No. 20-0043 (issued April 30, 2021).

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

injury to the right hip region. She referred to the sixth edition of the A.M.A., *Guides* and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-4 (Hip Regional Grid), page 512, appellant had two percent permanent impairment of the right lower extremity for the class of diagnosis (CDX) of hip bursitis.

By decision dated October 19, 2018, OWCP's Branch of Hearings and Review vacated the September 6, 2018 decision and remanded the case for further development of the medical evidence.

OWCP subsequently referred the claim, along with a statement of accepted facts (SOAF) and a series of questions, to Dr. Kevin Kuhn, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), to provide an impairment rating in conformity with the A.M.A., *Guides* and *The Guides Newsletter*.

In a report dated January 30, 2019, Dr. Kuhn reviewed the SOAF and noted appellant's accepted conditions of lumbar sprain and left leg contusion. He indicated that he disagreed with Dr. Watkins Campbell's September 14, 2018 impairment rating because it was based on the diagnosis of right hip bursitis, which was not an accepted condition. Utilizing the DBI method, under Table 17-4 (Lumbar Spine Regional Grid), page 570, Dr. Kuhn determined that appellant had zero percent permanent impairment for the diagnosis of lumbar sprain, now resolved with no objective findings. He also reported that, under Table 16-3 (Knee Regional Grid), page 509, she had zero percent permanent impairment for the diagnosis of left soft tissue lesion with no significant objective abnormal findings. Dr. Kuhn noted that appellant reached maximum medical improvement on September 14, 2018. He concluded that she had no permanent impairment causally related to the accepted September 9, 2017 employment injury.

By *de novo* decision dated February 14, 2019, OWCP denied appellant's schedule award claim based on the opinion of Dr. Kuhn, the DMA.

On February 21, 2019 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on June 11, 2019. By decision dated August 12, 2019, OWCP's hearing representative affirmed the February 14, 2019 decision.

Appellant appealed to the Board.

By decision dated April 30, 2021, the Board set aside the August 12, 2019 decision, finding that the DMA had properly provided a rating for appellant's left leg contusion in accordance with the A.M.A., *Guides*, but improperly applied the methodology for rating spinal nerve impairments affecting the upper or lower extremities in accordance with the A.M.A., *Guides* and *The Guides Newsletter*. The Board remanded the case for OWCP to obtain a supplemental report from the DMA.<sup>5</sup>

Following the Board's decision, OWCP requested that Dr. Kuhn provide an addendum report, clarifying whether appellant sustained permanent impairment of a scheduled member or

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<sup>5</sup> *Supra* note 3.

function of the body as a result of her accepted lumbar strain injury in accordance with the A.M.A., *Guides* and *The Guides Newsletter*.

In an August 30, 2021 supplemental report, Dr. Kuhn reviewed appellant's history of injury, including Dr. Watkins Campbell's September 4, 2018 report, and noted that physical examination demonstrated normal range of motion of the lumbar spine. He noted appellant's accepted condition of lumbar strain and indicated that she had no evidence of radiculopathy. Dr. Kuhn utilized Proposed Table 2 of *The Guides Newsletter* and indicated that she had zero percent permanent impairment for her spine condition due to no evidence of radiculopathy. Regarding appellant's left leg contusion injury, he utilized Table 16-3, page 509, and determined that she was a class 0 impairment for a soft tissue lesion with no significant objective abnormal findings, which equated to zero percent permanent impairment of the left lower extremity. Dr. Kuhn also opined that, while there was sufficient evidence to expand her claim to include a right thigh contusion, there was no objective evidence that she still had residuals of a bruised thigh nine months after the injury.

By *de novo* decision dated September 23, 2021, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member of function of the body, warranting a schedule award.

On September 29, 2021 appellant, through counsel, requested a telephonic hearing before OWCP's hearing representative, which was held on January 13, 2022.

By decision dated March 24, 2022, OWCP's hearing representative affirmed the September 23, 2021 decision.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>6</sup> and its implementing regulations<sup>7</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. 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.<sup>8</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.<sup>9</sup>

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*:

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<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Id.* at § 10.404 (a); *see also* *Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (a) (March 2017); *id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

*A Contemporary Model of Disablement*.<sup>10</sup> Under the sixth edition, for lower extremity impairments, the evaluator identifies the impairment of the CDX, which is then adjusted by a grade modifier for functional history (GMFH), a grade modifier for physical examination (GMPE), and/or a grade modifier for clinical studies (GMCS).<sup>11</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> Furthermore, the back is specifically excluded from the definition of an organ under FECA.<sup>15</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 procedures indicate that the July/August 2009 edition of *The Guides Newsletter* is to be applied.<sup>16</sup>

### 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 an August 30, 2021 supplemental report, Dr. Kuhn reviewed appellant's history of injury and noted her accepted conditions of lumbar strain and left leg contusion. He reported that examination on September 4, 2018 demonstrated normal range of motion in her lumbar spine. Dr. Kuhn utilized Table 2 of *The Guides Newsletter* and indicated that appellant had zero percent permanent impairment of the lower extremity for her spine condition due to no evidence of radiculopathy.

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 zero percent

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<sup>10</sup> A.M.A., *Guides* 3, section 1.3.

<sup>11</sup> *Id.* at 493-556.

<sup>12</sup> *Id.* at 521.

<sup>13</sup> *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).

<sup>14</sup> 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).

<sup>15</sup> *See* 5 U.S.C. § 8101(19); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

<sup>16</sup> *Supra* note 9 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

permanent impairment of the lower extremities due to her accepted lumbar sprain.<sup>17</sup> He utilized Table 2 of *The Guides Newsletter* and noted that she had no ratable impairment due to no evidence of radiculopathy. Dr. Kuhn's report is detailed, well-rationalized, and based on a proper factual background, and thus his opinion represents the weight of the medical evidence.<sup>18</sup> As such, the Board finds that appellant has not met her burden of proof to establish a ratable permanent impairment of the lower extremities causally related to her accepted September 9, 2017 employment injury.

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 permanent impairment.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 29, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>17</sup> See *J.C.*, Docket No. 21-0288 (issued July 1, 2021); *T.B.*, Docket No. 20-0642 (issued September 30, 2020).

<sup>18</sup> See *V.S.*, Docket No. 19-1679 (issued July 8, 2020); *T.F.*, Docket No. 19-157 (issued April 21, 2020).