

FACTUAL HISTORY

On April 11, 2014 appellant, then a 47-year-old pipefitter, filed a traumatic injury claim (Form CA-1) alleging that on April 21, 2014 he sustained injuries to his upper and lower back while shifting a 380-pound load while in the performance of duty. OWCP accepted the claim for intervertebral disc disorders with radiculopathy, lumbar region.

In a report dated January 25, 2020, Dr. Charles Xeller, an orthopedic surgeon, reviewed appellant's history of injury and the medical record, conducted a physical examination and opined that he had reached maximum medical improvement (MMI) on the date of examination, January 25, 2020. He noted a past medical history including poorly controlled diabetes and a gunshot wound near the spine on April 10, 2010, followed by the accepted April 21, 2014 employment injury. Dr. Xeller reviewed appellant's electromyogram and nerve conduction velocity (EMG/NCV) study dated December 13, 2019, noting that it showed evidence of peripheral neuropathy that may be indicative of radiculopathy with a possible component of diabetic neuropathy. He also reviewed a computerized tomography (CT) scan dated December 20, 2019, which revealed disc bulges at L4-5 and L5-S1. On examination of the lower extremities, Dr. Xeller noted moderate sensory deficits including numbness in the feet, worse with standing, and decreased sensation predominantly in the lateral and plantar aspect of his feet with slightly decreased reflexes, which he found corresponded to first sacral radiculopathy. Referring to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² as well as *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*), he found that appellant had a Class 1, grade C impairment, assigning a grade modifier for functional history (GMFH) of 1, a grade modifier for physical examination (GMPE) of 1, and a grade modifier for clinical studies (GMCS) of 1. Dr. Xeller opined that appellant's moderate S1 neuropathy at grade C resulted in two percent permanent impairment of the left lower extremity and two percent permanent impairment of the right lower extremity.

On June 15, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On January 7, 2021 OWCP referred the record and a statement of accepted facts (SOAF) to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), and requested that he evaluate appellant's permanent impairments under the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*.

In a report dated January 9, 2021, Dr. Katz reviewed the medical record and SOAF, including the January 25, 2020 report of Dr. Xeller. Referring to Proposed Table 2: Spinal Nerve Impairment, Lower Extremity Impairment of *The Guides Newsletter*, noting that the class of diagnosis (CDX), spinal nerve condition, was a Class 1 impairment, and applying Dr. Xeller's grade modifiers to the default values, he applied the net adjustment formula to appellant's bilateral S1 conditions. Dr. Katz concurred with Dr. Xeller's calculation of two percent permanent impairment of the left lower extremity and two percent permanent impairment of the right lower

² A.M.A., *Guides* (6th ed. 2009).

extremity. He opined that this determination was supported by the records reviewed and consistent with the methodology of the sixth edition A.M.A., *Guides* and *The Guides Newsletter*. Dr. Katz opined that the A.M.A., *Guides* did not allow for an alternative impairment rating based on range of motion (ROM) for the relevant diagnoses. He opined that the date of MMI was January 25, 2020.

By decision dated February 12, 2021, OWCP granted appellant a schedule award for two percent permanent impairment of the left lower extremity and two percent permanent impairment of the right lower extremity. The award ran for 11.52 weeks from January 25 through April 14, 2020 and was based on the January 25, 2020 clinical findings of Dr. Xeller and the January 9, 2021 report of Dr. Katz, serving as the DMA.

LEGAL PRECEDENT

The schedule award provisions of FECA³ and its implementing regulations⁴ 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 of a member shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants through its implementing regulations, OWCP has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁵ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.⁶ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.⁷

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.⁸ However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.⁹ The sixth edition of the A.M.A., *Guides* (2009) provides a specific methodology for rating spinal nerve extremity impairment in *The Guides Newsletter*. It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* See also *T.T.*, Docket No. 18-1622 (issued May 14, 2019).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); see also Chapter 3.700.2 and Exhibit 1 (January 2010).

⁷ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁸ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); see *B.W.*, Docket No. 18-1415 (issued March 8, 2019); *J.M.*, Docket No. 18-0856 (issued November 27, 2018); *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

⁹ *Id.* at § 8107(c); *id.* at § 10.404(a) and (b); see *C.W.*, Docket No. 19-1590 (issued September 24, 2020); *A.G.*, Docket No. 18-0815 (issued January 24, 2019); *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

ratings for the spine. FECA-approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities. The appropriate tables for rating spinal nerve extremity impairment are incorporated in the Federal (FECA) Procedure Manual.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than two percent permanent impairment of the left lower extremity or two percent permanent impairment of the right lower extremity, for which he previously received schedule award compensation.

In his January 25, 2020 report, Dr. Xeller concluded that appellant had two percent left lower extremity permanent impairment and two percent right lower extremity permanent impairment. OWCP properly referred this report to its DMA, Dr. Katz. In his January 9, 2021 report, Dr. Katz indicated that he had reviewed Dr. Xeller's report. He correctly noted that FECA does not allow a schedule award for the spine, though it does allow for schedule awards for spinal nerve injuries resulting in impairment of the extremities.¹¹ With reference to *The Guides Newsletter*, Dr. Katz concurred with Dr. Xeller's calculations of permanent impairment based upon the bilateral radiculopathy conditions of the lumbar region including sensory neuropathy at S1. He found that Dr. Xeller's calculation of two percent permanent impairment of the left lower extremity and two percent permanent impairment of the right lower extremity was supported by the weight of the medical evidence.

The Board finds that the DMA properly applied the standards of the A.M.A., *Guides* and *The Guides Newsletter* to the physical examination findings of Dr. Xeller. The DMA accurately summarized the relevant medical evidence including findings on examination, and reached conclusions about appellant's conditions that comported with these findings.¹² He noted that the A.M.A., *Guides* did not allow for an impairment rating based on ROM for the relevant diagnoses.¹³ The DMA properly referred to *The Guides Newsletter* in calculating appellant's percentage of permanent impairment of the lower extremities based on a spinal condition. As his report is detailed, well rationalized, and based on a proper factual background, the DMA's opinion represents the weight of the medical evidence.¹⁴ There is no medical evidence of record utilizing the appropriate tables of the sixth edition of the A.M.A., *Guides* or *The Guides Newsletter* demonstrating a greater percentage of permanent impairment of the bilateral lower extremities. Accordingly, the Board finds that, as appellant has not submitted medical evidence establishing greater than two percent permanent impairment of either the left lower extremity or right lower extremity, he has not met his burden of proof.

¹⁰ *Supra* note 6 at Chapter 3.700, Exhibit 4 (January 2010).

¹¹ *Supra* note 9.

¹² *C.W.*, *supra* note 9; *M.S.*, Docket No. 19-1011 (issued October 29, 2019); *W.H.*, Docket No. 19-0102 (issued June 21, 2019); *J.M.*, Docket No. 18-1387 (issued February 1, 2019).

¹³ *R.L.*, Docket No. 19-1793 (issued August 7, 2020).

¹⁴ *See M.S.*, *supra* note 12; *D.S.*, Docket No. 18-1816 (issued June 20, 2019).

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 his burden of proof to establish greater than two percent permanent impairment of his left lower extremity or two percent permanent impairment of his right lower extremity, for which he previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 31, 2023
Washington, DC

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

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

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