

¹ Appellant appealed from a purported final adverse decision of OWCP dated July 15, 2025. The Board notes that although there is a July 15, 2025 decision of record, it is a preliminary overpayment determination and thus interlocutory in nature. Therefore, it does not constitute a final adverse decision issued by OWCP over which the Board may properly exercise jurisdiction. *See* 20 C.F.R. § 501.2(c)(2). The only final adverse decision over which the Board may properly exercise jurisdiction is OWCP's May 1, 2025 decision, which is the subject of the current appeal. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUE

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

FACTUAL HISTORY

On September 28, 2023 appellant, then a 45-year-old aircraft mechanic, filed a traumatic injury claim (Form CA-1) alleging that on September 5, 2023 he injured his lower back when lifting a fuel tank from an aircraft while in the performance of duty. He stopped work on September 5, 2023 and returned to light-duty work on September 28, 2023. OWCP accepted the claim for acute myofascial strain of the lumbar region and protrusion of the lumbar vertebral disc. It paid appellant wage-loss compensation on the supplemental rolls commencing June 6, 2024 when the employing establishment no longer had light-duty work available. Appellant returned to light-duty work on December 2, 2024.

On September 21, 2023 appellant underwent a lumbar spine magnetic resonance imaging (MRI) scan which demonstrated mild retrolisthesis and disc bulge at L5-S1 with bilateral foraminal stenosis and right paracentral disc protrusion at L3-4 with right foraminal stenosis.

In an October 14, 2024 report, Dr. Ahmed Khalifa, a physician Board-certified in occupational medicine, performed a physical examination and related that appellant had no motor or sensory complaints, but experienced sporadic low back pain. He opined that appellant had reached maximum medical improvement (MMI) on October 4, 2024. Dr. Khalifa provided a whole person impairment rating of three percent permanent impairment due to lumbar spine sprain/strain.

On November 22, 2024 Dr. Vanessa Pearson, a physician Board-certified in preventative medicine, diagnosed acute myofascial strain of the lumbar region, herniated nucleus pulposus, L5-S1, and right lumbosacral radiculopathy. She reported that appellant reached MMI on November 22, 2024 and opined that he had three percent permanent impairment in accordance with state workers' compensation guidance.

On December 3, 2024 appellant filed a claim for compensation (Form CA-7) for a schedule award.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the May 1, 2025 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

On December 11, 2024 OWCP referred appellant's claim to Dr. Nathan Hammel, a Board-certified orthopedic surgeon, serving as a district medical adviser (DMA), to review the medical evidence of record, including the reports of Drs. Khalifa and Pearson, and requested that he provide an opinion regarding permanent impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴

In a January 7, 2025 report, Dr. Hammel advised that appellant reached MMI on October 2, 2000. He referenced *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*) and determined that appellant had zero percent permanent impairment as there was no evidence of ongoing spinal nerve involvement. Dr. Hammel found that appellant's motor and sensory examinations were normal.

On January 28, 2025 OWCP referred appellant, along with a SOAF, the case record, and a series of questions, to Dr. Walter A. Del Gallo, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine permanent impairment of his extremities in accordance with the sixth edition of the A.M.A., *Guides*.

In a February 27, 2025 report, Dr. Del Gallo related appellant's physical examination findings and noted the accepted conditions of acute myofascial strain of the lumbar region, and protrusion of lumbar vertebral disc. He found that appellant had normal findings of strength, sensation, and reflexes for the extremities with no atrophy. Dr. Del Gallo explained that FECA did not allow a schedule award for impairment of the back and that appellant had a Class 0 impairment for all spinal nerves in accordance with *The Guides Newsletter*.

On March 17, 2025 OWCP referred appellant's claim to Dr. William Tontz, Jr., a Board-certified orthopedic surgeon, serving as a DMA, to review the medical evidence of record. In his April 1, 2025 report, the DMA concurred with Dr. Del Gallo's findings and impairment rating.

By decision dated May 1, 2025, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to demonstrate a measurable permanent impairment.

LEGAL PRECEDENT

The schedule award provisions of FECA⁵ and its implementing regulations⁶ 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. OWCP has

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ *Supra* note 1.

⁶ 20 C.F.R. § 10.404.

adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸

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.⁹ 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 that the date on which this occurred (date of MMI), 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*.¹⁰

Neither FECA nor its implementing regulations provide for a schedule award for impairment to the back or to the body as a whole.¹¹ Furthermore, the back is specifically excluded from the definition of organ under FECA.¹² 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.¹³ 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.¹⁴ OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an

⁷ *Id.* at 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁹ *V.D.*, Docket No. 22-0123 (issued April 20, 2023); *J.P.*, Docket No. 21-0801 (issued December 22, 2021); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹⁰ *Supra* note 8 at Chapter 2.808.5 (March 2017).

¹¹ *G.W.*, Docket No. 23-0600 (issued September 20, 2023); *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).

¹² *See* 5 U.S.C. § 8101(19); *see also T.M.*, Docket No. 23-0211 (issued August 10, 2023); *G.S.*, Docket No. 18-0827 (issued May 1, 2019); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

¹³ *Supra* note 8 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

¹⁴ *C.J.*, Docket No. 21-1389 (issued July 24, 2023); *E.D.*, Docket No. 13-2024 (issued April 24, 2014); *D.S.*, Docket No. 13-2011 (issued February 18, 2014).

opinion concerning the nature and extent of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.¹⁵

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.

Dr. Pearson completed a November 22, 2024 report diagnosing acute myofascial strain of the lumbar region, herniated nucleus pulposus, L5-S1, and right lumbosacral radiculopathy. She reported that appellant reached MMI on November 22, 2024, and found that he had three percent permanent impairment under state worker's compensation guidance. Dr. Pearson, however, failed to provide an opinion on permanent impairment based on the sixth edition of the A.M.A., *Guides*.¹⁶ Thus, her impairment rating lacks probative value and is insufficient to establish appellant's schedule award claim.

In an October 14, 2024 report, Dr. Khalifa opined that appellant had three percent whole person permanent impairment due to his spine conditions. However, 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.¹⁷ Accordingly, the Board finds that Dr. Khalifa's whole person impairment rating does not comport with OWCP's procedures and is insufficient to establish permanent impairment.¹⁸

In his February 27, 2025 report, Dr. Del Gallo opined that, on physical examination, appellant had no sensory or motor deficits in his upper or lower extremities. The Board finds that he properly applied *The Guides Newsletter* in finding that appellant had no ratable permanent impairment of the upper or lower extremities based on neurologic deficits of sensory and motor loss.¹⁹

In accordance with its procedures, OWCP properly routed the case record to Dr. Tontz, its DMA, who opined that appellant had no permanent impairment. He found that pursuant to *The Guides Newsletter*, appellant was not entitled to a schedule award for a spinal nerve impairment based on Dr. Del Gallo's normal sensory and motor examination findings. Dr. Tontz agreed with Dr. Del Gallo that there was no permanent impairment of any spinal nerve due to

¹⁵ *V.K.*, Docket No. 21-1006 (issued September 25, 2023); *D.C.*, Docket No. 23-0455 (issued August 28, 2023); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

¹⁶ *C.M.*, Docket No. 21-1077 (issued March 16, 2022); *M.A.*, Docket No. 19-1732 (issued September 9, 2020); *L.C.*, Docket No. 19-0564 (issued September 16, 2019).

¹⁷ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); see *A.G.*, Docket No. 18-0815 (issued January 24, 2019); *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

¹⁸ 5 U.S.C. § 8101(19); *B.J.*, Docket No. 25-0323 (issued March 13, 2025); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

¹⁹ *B.J.*, *id.*; *T.T.*, Docket No. 24-0079 (issued April 1, 2024).

motor or sensory deficits due to a spinal nerve, and thus no permanent impairment under FECA due to the accepted spinal conditions. The Board finds that the DMA properly used Dr. Del Gallo's findings and provided an explanation in conformance with the A.M.A., *Guides* and *The Guides Newsletter*, that appellant had no permanent impairment of his upper or lower extremities due to either a motor or sensory deficit of the spinal nerves.²⁰

As the medical evidence of record is insufficient to establish permanent impairment of a scheduled member or function of the body, the Board finds that appellant has not met his burden of proof.

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 permanent 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.

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 28, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁰ *J.U.*, Docket No. 21-1298 (issued February 16, 2023).