

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>O.W., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 24-0005</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Urbana, IL, Employer</b>	)	<b>Issued: July 30, 2025</b>
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*Appearances:*

*Appellant, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 4, 2023 appellant filed a timely appeal from an August 10, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

**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.

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<sup>1</sup> By order dated July 30, 2025, the Board granted the Director's petition for reconsideration of the Board's February 8, 2024 *Order Remanding Case*.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the August 10, 2023 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.*

## **FACTUAL HISTORY**

This case has previously been before the Board on different issues.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are set forth below.

On March 2, 1993 appellant, then a 32-year-old janitor, filed a traumatic injury claim (Form CA-1) alleging that on February 25, 1993 he injured his back when he fell downstairs carrying a 50-pound bag of salt while in the performance of duty. OWCP accepted the claim for low back strain, an aggravation of preexisting spinal stenosis at L3-4 and L4-5, and an aggravation of degenerative disc disease at L5-S1. On June 6, 1995 appellant underwent an unauthorized lumbar laminectomy at L3-4, L4-5, and L5-S1 and a discectomy at L5-S1. He returned to modified-duty work in August 1995. Appellant stopped work in 1997. OWCP paid wage-loss compensation on the periodic rolls effective May 16, 2004. It terminated appellant's wage-loss compensation and medical treatment effective December 1, 2016.<sup>5</sup>

Appellant underwent a series of electrodiagnostic studies. He received physical therapy from Tiffany DelaCruz, and Erica Religioso, physical therapists. Appellant submitted reports from Glenett Barrett, a certified nurse practitioner.

In an April 1, 2016 second opinion report, Dr. Allan M Brecher, an orthopedist, diagnosed chronic back pain and noted that appellant's magnetic resonance imaging (MRI) scan was not significant and that his neurological examination was normal with no objective findings to support an ongoing aggravation of spinal stenosis. He determined that appellant had a temporary aggravation of spondylosis which had resolved. Dr. Brecher opined that he had reached maximum medical improvement (MMI) and could return to work.

On June 12, 2018 Dr. Victoria J. Johnson, a Board-certified physiatrist, performed a physical examination and found no atrophy in the lower extremities, intact sensation to light touch, and full range of motion in the hips. She diagnosed lumbar spondylosis and attributed appellant's pain to scar tissue and stress from obesity.

In an August 24, 2022 report, Dr. Paul A. Schaap, a Board-certified family practitioner, related appellant's symptoms of low back pain with radiation into both legs. He also related leg weakness resulting in the need for a walker or wheelchair for mobility. Appellant reported intermittent loss of sensation in both feet. Dr. Schaap reviewed a July 3, 2021 MRI scan and observed multilevel degenerative disc disease and severe spinal stenosis at L3-4 and L4-5.

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<sup>4</sup> Docket No. 20-1343 (issued August 16, 2022); Docket No. 19-0316 (issued June 25, 2019); Docket No. 17-1881 (issued May 1, 2018); Docket No. 06-1607 (issued February 2, 2007).

<sup>5</sup> The Board affirmed this decision on May 1, 2018. Docket No. 17-1881 (issued May 1, 2018). Appellant continued to request reconsideration and appealed a November 7, 2018 merit decision to the Board. By decision dated June 25, 2019, the Board affirmed this decision finding that appellant had not met his burden of proof to establish continuing employment-related residuals or disability after December 1, 2016. Docket No. 19-0316 (issued June 25, 2019). By decision dated August 16, 2022, the Board found that appellant had not met his burden of proof to establish continuing disability or residuals on or after December 1, 2016 causally related to his February 25, 1993 employment injury. Docket No. 20-1343 (issued August 16, 2022).

Appellant filed a claim for compensation (Form CA-7) requesting a schedule award dated July 5, 2023.

In support of this claim, appellant provided documentation from the Department of Veterans Affairs listing his service-connected disability compensation and disabilities as bilateral carpal tunnel syndrome, major depression, hypertension, and low back pain.

In a July 10, 2023 development letter, OWCP requested that appellant submit an impairment calculation addressing whether he had reached maximum medical improvement (MMI) and provide an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>6</sup> It indicated that, to date, no medical evidence had been received in support of his claim for a schedule award. OWCP advised that, if appellant's physician was unable or unwilling to provide the required report, to notify OWCP in writing and if his case met the essential elements for a schedule award claim, he would be scheduled to be seen by a second opinion specialist. It afforded him 30 days to submit the necessary medical evidence. No additional medical evidence was received.

By decision dated August 10, 2023, OWCP denied appellant's schedule award claim.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>7</sup> and its implementing 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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. 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>

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 that the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be

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

<sup>7</sup> *Supra* note 2.

<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 2.808.5a (March 2017); *see also id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>11</sup> *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).

visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.<sup>12</sup>

Neither FECA nor its implementing 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, Rating Spinal Nerve Impairment Using the Sixth Edition* (July/August 2009) (*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> OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an 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.<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 an August 24, 2022 report, Dr. Schaap related appellant's symptoms of low back pain with radiation into both legs. He did not, however, find that he had permanent impairment due to his accepted employment injury, address whether he had reached MMI, or utilize the sixth edition of the A.M.A., *Guides*.<sup>18</sup> This evidence is, therefore, insufficient to establish the claim.<sup>19</sup>

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<sup>12</sup> *Supra* note 9 at Chapter 2.808.5 (March 2017).

<sup>13</sup> *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).

<sup>14</sup> 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).

<sup>15</sup> *Supra* note 9 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

<sup>16</sup> *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).

<sup>17</sup> *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).

<sup>18</sup> *Supra* note 17.

<sup>19</sup> *Id.*

On July 5, 2023 appellant filed a Form CA-7 for a schedule award. OWCP, on July 10, 2023, requested that he submit a permanent impairment evaluation from his physician addressing the date of MMI and extent of any employment-related permanent impairment using the A.M.A., *Guides*. Appellant, however, did not submit the necessary medical evidence to substantiate his claim.

As noted above, appellant must submit an evaluation from a physician that supports a finding that he has reached MMI, and which includes a description of impairment in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>20</sup>

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 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 permanent impairment of a scheduled member or function of the body, warranting a schedule award.

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<sup>20</sup> *T.Z.*, Docket No. 23-0068 (issued June 26, 2025); *M.C.*, Docket No. 25-0438 (issued April 22, 2025); *R.G.*, Docket No. 25-0390 (issued April 9, 2025); *J.P.*, Docket No. 21-0801 (issued December 22, 2021); *D.J.*, Docket No. 20-0017 (issued August 31, 2021); *B.V.*, Docket No. 17-0656 (issued March 13, 2018); *C.B.*, Docket No. 16-0060 (issued February 2, 2016); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 10, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 30, 2025  
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