United States Department of Labor
Employees' Compensation Appeals Board

L.R., Appellant	)	
and	)	**Docket No. 25-0466**
	)	**Issued: July 9, 2025**
U.S. POSTAL SERVICE, POST OFFICE, Wallingford, CT, Employer	)	

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 April 2, 2025, appellant filed a timely appeal from March 19 and April 2, 2025 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish disability from work commencing April 4, 2024, causally related to her accepted May 4, 2011 employment injury; and (2) whether appellant has met her burden of proof to establish greater than two percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.[2] The relevant facts are as follows.

On June 7, 2011, appellant, then a 47-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained back and leg conditions causally related to factors of her federal employment, including bending, lifting, stretching, and pushing heavy equipment and trays. She noted that she first became aware of her conditions and realized their relation to her federal employment on May 4, 2011. The employing establishment indicated that appellant was last exposed to the work factors alleged to have caused her conditions on May 7, 2011. OWCP accepted the claim for lumbar subluxation at L2, left lumbar radiculitis, and lumbar degenerative disc disease. It paid appellant wage-loss compensation on the supplemental rolls for the period May 6 through July 15, 2011.

On August 21, 2023, appellant filed a claim for compensation (Form CA-7) for a schedule award.

On November 7, 2023, OWCP referred appellant, along with the medical record, a November 7, 2023 statement of accepted facts (SOAF), and a series of questions, to Dr. Ira Spar, a Board-certified orthopedic surgeon, for a second opinion examination and impairment evaluation in accordance with the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3]

In a December 14, 2023 report, Dr. Spar reviewed the medical evidence and the SOAF and documented physical examination findings. He diagnosed degenerative lumbar intervertebral disc disease and lumbosacral neuritis or radiculitis on the left side as work related. Dr. Spar opined that appellant had reached maximum medical improvement (MMI) in May 2015. Using the diagnosis-based impairment (DBI) rating methodology for peripheral nerve impairment of the lower extremity, as outlined in section 16.4(c) and Table 16-12 (peripheral nerve impairment), he set forth his impairment calculations and concluded that appellant had one percent impairment of the left lower extremity for a Class 1 femoral nerve with no motor deficit. No impairment rating was provided for the right lower extremity.

On January 19, 2024, OWCP referred the medical record and the November 7, 2023 SOAF to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA).

In a January 30, 2024 report, Dr. Harris reviewed Dr. Spar's December 14, 2023 report, finding decreased left L3 and L4 dermatomal sensation and one percent permanent left lower extremity impairment based on the DBI method for peripheral nerve impairments. He also noted that the September 6, 2011 lumbar MRI scan demonstrated lumbar bulging at L2, L3, L4, L5, and

[2] Docket No. 24-0903 (issued December 10, 2024).

[3] A.M.A., *Guides* (6th ed. 2009).

S1. Dr. Harris disagreed with Dr. Spar's impairment rating methodology, noting that spinal nerve impairment from accepted lumbar conditions is rated using the A.M.A., *Guides* and *The Guides Newsletter*, *Rating Spinal Nerve Extremity Impairment* (July/August 2009) (*The Guides Newsletter*). For the right lower extremity, he indicated that appellant did not have any neurologic deficit in the lower extremities consistent with lumbar radiculopathy. Dr. Harris opined that this was consistent with severity zero under Table 16-11 on page 533 of the A.M.A., *Guides*, relevant to evaluating the severity of sensory and motor deficits, and a Class zero placement under Proposed Table 2 of *The Guides Newsletter*. Thus, he concluded that appellant had no right lower extremity impairment under *The Guides Newsletter* due to radiculopathy. With regard to the left lower extremity, Dr. Harris found that appellant had a Class 1 sensory lumbar radiculopathy at L3 and L4, which each yielded one percent lower extremity impairment under Proposed Table 2, for a total of two percent impairment of the left lower extremity. He further opined that she had reached MMI on December 14, 2023, the date of Dr. Spar's evaluation.

OWCP requested clarification from Dr. Harris, noting that Dr. Spar had provided one percent permanent impairment of the left lower extremity. It provided an updated SOAF dated June 6, 2024.

In a June 7, 2024 supplemental report, Dr. Harris reviewed the June 6, 2024 updated SOAF, and the medical record, noting that Dr. Spar found one percent permanent left lower extremity impairment based on decreased left L3 and L4 dermatomal sensation and the September 6, 2011 lumbar MRI scan demonstrating lumbar bulging at L2, L3, L4, L5, and S1. He reiterated his previous opinion that appellant had no permanent impairment of the right lower extremity and two percent permanent impairment of the left lower extremity.

By decision dated August 6, 2024, OWCP granted appellant a schedule award for two percent permanent impairment of the left lower extremity and found zero percent permanent impairment of the right lower extremity. The period of the award ran for 5.76 weeks from December 14, 2023 through January 23, 2024.

Appellant appealed to the Board. By decision dated December 10, 2024,[4] the Board affirmed OWCP's August 6, 2024 decision, in part, finding that appellant had not met her burden of proof to establish greater than zero percent permanent impairment of the right lower extremity. Regarding the left lower extremity, the Board found that the case was not in posture for a decision as further development of the medical evidence was required. The Board remanded the case for OWCP to request that Dr. Harris address the applicable grade modifier adjustments and apply the net adjustment formula to determine appellant's final left lower extremity impairment, to be followed by a *de novo* decision.

On December 19, 2024, appellant began filing Form CA-7 claims for disability from work, commencing April 4, 2024.

[4] *Supra* note 2.

On December 23, 2024, appellant filed a Form CA-7 claim for an increased schedule award.[5]

In a compensation claim development letter dated December 30, 2024, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

In a January 16, 2025 report, Dr. Patrick J. Hackett, a chiropractor, opined that appellant had reached MMI on May 15, 2015 and was being treated on an as-needed basis for intermittent flare-ups for the past several years. He noted that she related that she retired due to her back pain and that she felt she could not perform her job duties. Dr. Hackett attached a report of even date, which documented reduced sensation to pain over the left distal quadriceps and palpable taut muscle fibers and tenderness in the thoracolumbar spine. He diagnosed lumbar and thoracic sprain/strain and lumbar radiculopathy.[6] Dr. Hackett advised that appellant's decision to leave work because of a permanent disability should be determined by an independent medical examination.

On February 6, 2025, OWCP prepared an updated SOAF and requested clarification from Dr. Harris as to the nature and percentage of impairment of appellant's left lower extremity in accordance with the A.M.A., *Guides* and *The Guides Newsletter*.

In a February 15, 2025 supplemental report, Dr. Harris reviewed OWCP's February 6, 2025 correspondence, the updated SOAF, and the medical record. Regarding the left lower extremity, he opined that appellant had a Class 1 sensory lumbar radiculopathy at L3 and L4, which each yielded one percent lower extremity impairment under Proposed Table 2, for a total of two percent permanent impairment of the left lower extremity.

By decision dated March 19, 2025, OWCP denied appellant's disability claim, finding that she had not submitted sufficient medical evidence to establish disability from work during the claimed period causally related to the accepted employment injury.

By *de novo* decision dated April 2, 2025, OWCP denied appellant's claim for an increased schedule award. It found that the medical evidence was insufficient to establish greater than two percent permanent impairment of the left lower extremity, for which she previously received a schedule award and/or any permanent impairment of the right lower extremity.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including that any disability or specific condition for which

[5] Appellant retired from federal service, effective December 30, 2024.

[6] In a letter dated February 14, 2025, Dr. Hackett amended his diagnoses to include multiple lumbar subluxations as demonstrated on x-ray.

compensation is claimed is causally related to the employment injury.[7] Under FECA, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[8] Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[9] An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.[10] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.[11]

The medical evidence required to establish causal relationship between a claimed period of disability and the accepted employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.[12]

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.[13]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work commencing April 4, 2024, causally related to her accepted May 4, 2011 employment injury.

In support of her claim for compensation, appellant submitted a January 16, 2025 report by Dr. Hackett, a chiropractor, who diagnosed lumbar and thoracic sprain/strain, subluxations as demonstrated on x-ray, and lumbar radiculopathy. Dr. Hackett advised that appellant's decision to leave work because of a permanent disability should be determined by an independent medical examination. He, however, did not offer an opinion as to whether appellant was disabled from

[7] *S.F.*, Docket No. 20-0347 (issued March 31, 2023); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] 20 C.F.R. § 10.5(f).

[9] *See H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

[10] *See H.B.*, *id*.; *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

[11] *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

[12] *F.B.,* Docket No. 22-0679 (issued January 23, 2024); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

[13] *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi,* 52 ECAB 291, 293 (2001).

work due to the accepted conditions during the claimed period. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[14] Therefore, this evidence is of no probative value and is insufficient to establish appellant's claim for compensation.

As the medical evidence of record is insufficient to establish disability from work commencing April 4, 2024, causally related to the accepted May 4, 2011 employment injury, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

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.[15]

The schedule award provisions of FECA[16] and its implementing regulations[17] 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 shall be determined. OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants. As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[18]

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.[19] However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.[20] 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 ratings for the spine. The FECA-approved methodology is premised on

[14] *See S.M.*, Docket No. 22-1209 (issued February 27, 2024); *A.S.*, Docket No. 21-1263 (issued July 24, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *See T.H.*, Docket No. 19-1066 (issued January 29, 2020); *D.F.*, Docket No. 18-1337 (issued February 11, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

[16] 5 U.S.C. § 8107.

[17] 20 C.F.R. § 10.404.

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

[19] 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).

[20] *Supra* note 18 at Chapter 2.808.5c(3) (February 2022).

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.[21]

In addressing lower extremity impairment due to peripheral or spinal nerve root involvement, the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter* require identifying the class of diagnosis (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).[22] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[23]

ANALYSIS -- ISSUE 2

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

The Board, in its August 6, 2024 decision remanded the case for OWCP to request that Dr. Harris address the applicable grade modifier adjustments using the net adjustment formula to determine appellant's final left lower extremity impairment, to be followed by a *de novo* decision.

On remand, by letter dated February 6, 2025, OWCP provided an updated SOAF of the same date and requested clarification from Dr. Harris as to the nature and percentage of impairment of appellant's left lower extremity in accordance with the A.M.A., *Guides* and *The Guides Newsletter*.

In a February 15, 2025 supplemental report, Dr. Harris reviewed OWCP's February 6, 2025 correspondence, the updated SOAF, and the medical record. Regarding the left lower extremity, he opined that appellant had a Class 1 sensory lumbar radiculopathy at L3 and L4, which each yielded one percent lower extremity impairment under Proposed Table 2, for a total of two percent impairment of the left lower extremity.

The Board finds that the weight of the medical evidence rests with the opinion of Dr. Harris, the DMA, as he provided a permanent impairment rating that properly applied the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*.[24] The record does not contain any other medical evidence establishing greater than the two percent permanent impairment of the left lower extremity previously awarded. Accordingly, appellant has not met her burden of proof to establish

[21] *Supra* note 18 at Chapter 3.700, Exhibit 4 (January 2010); *see L.H.*, Docket No. 20-1550 (issued April 13, 2021); *N.G.*, Docket No. 20-0557 (issued January 5, 2021).

[22] A.M.A., *Guides* 494-531; *see R.V.*, Docket No. 20-0005 (issued December 8, 2020); *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

[23] A.M.A., *Guides* 521.

[24] *See J.N.*, Docket No. 25-0451 (issued April 22, 2025); *L.D.,* Docket No. 19-0797 (issued October 2, 2019).

entitlement to a schedule award for a percentage of impairment greater than the two percent permanent impairment of the left lower extremity previously awarded.[25]

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 disability from work commencing April 4, 2024, causally related to her accepted May 4, 2011 employment injury. The Board further finds that she has not met her burden of proof to establish greater than two percent permanent impairment of her left lower extremity, for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the March 19 and April 2, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 9, 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

[25] *See J.N.*, *id*.; *T.W.,* Docket No. 18-0765 (issued September 20, 2019).