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B.J., Appellant)	
)	
and)	Docket No. 25-0323
)	Issued: March 13, 2025
U.S. POSTAL SERVICE, DORAVILLE POST)	
OFFICE, Atlanta, GA, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On February 7, 2025 appellant filed a timely appeal from August 14 and December 11, 2024 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

² The Board notes that, following the December 11, 2024 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 caserecord 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.*

(2) whether appellant has met her burden of proof to establish disability from work on July 3, 2024 causally related to her accepted October 10, 2017 employment injury.

FACTUAL HISTORY

On October 10, 2017 appellant, then a 36-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her lower back when she was lifting a box while in the performance of duty. She did not stop work. OWCP accepted the claim for cervical and lumbar strains and subsequently expanded the acceptance of the claim to include intervertebral disc displacement at L4-5 and lumbar radiculopathy.

On May 20, 2023, appellant filed a claim for compensation (Form CA-7) for a schedule award.

On November 16, 2023, OWCP referred the case record and a statement of accepted facts (SOAF) to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for review.

In a report dated November 22, 2023, Dr. Harris indicated that the record was insufficient to evaluate appellant's permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ He recommended a second opinion evaluation to determine the extent of her employment-related permanent impairment.

On March 28, 2024, OWCP referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Daniel Schlatterer, a Board-certified orthopedic surgeon, for a second opinion examination and a permanent impairment rating.

In an April 19, 2024 report, Dr. Schlatterer noted his review of the medical record and SOAF. He performed a physical examination, which revealed tenderness and paraspinal muscle spasms posteriorly, reduced range of motion (ROM) throughout the spine, negative straight leg raise bilaterally, intact sensation, normal deep tendon reflexes, and full strength of the lower extremities. Dr. Schlatterer noted the accepted diagnoses of lower back muscle strain, neck strain, intervertebral disc displacement of the lumbar spine, and lumbar radiculopathy. He applied the A.M.A., *Guides*,⁴ and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*), and determined that appellant had zero sensory or motor deficits in the upper or lower extremities resulting in zero percent permanent impairment as a result of spinal nerve impairments. Dr. Schlatterer concluded that she had 11 percent permanent impairment of the cervical spine and 20 percent permanent impairment of the lumbar spine using the diagnosis-based impairment (DBI) rating method. He applied the Combined Values Chart to calculate an impairment rating of 30 percent permanent impairment of the whole person.

³ A.M.A., *Guides* (6th ed. 2009).

⁴ *Id.*

In a June 28, 2024 medical report, Dr. Pickens A. Patterson, III, Board-certified in anesthesiology and pain medicine, noted that appellant related complaints of pain in her bilateral lower back and right hip, which radiated to her right lower extremity. He performed a physical examination, which revealed normal strength and sensation, and negative straight leg raise bilaterally. Dr. Patterson indicated that appellant was scheduled to undergo a repeat L4-5 epidural injection on July 3, 2024.

In a June 29, 2024 request for or notification of absence (PS Form 3971), appellant requested five hours of leave for an epidural injection.

In a report dated July 12, 2024, Dr. Harris, serving as the DMA, reviewed the SOAF and case record, including Dr. Schlatterer's April 19, 2024 report. He opined that appellant had reached maximum medical improvement on April 19, 2024, the date of Dr. Schlatterer's physical examination. Dr. Harris noted that Dr. Schlatterer found no motor or sensory deficits in either the upper or lower extremities. He referenced Proposed Table 2 of *The Guides Newsletter* and found that appellant had zero percent permanent impairment of the lower extremities due to no motor or sensory deficits. Dr. Harris further noted that FECA did not allow a schedule award for the spine, nor did it recognize whole person impairment for spinal conditions. He also noted that the A.M.A., *Guides* did not allow for an alternative ROM impairment calculation based on the key diagnostic factors for the accepted conditions. Based on Dr. Schlatterer's evaluation findings, Dr. Harris found that there was no permanent impairment of any spinal nerve, and thus no permanent impairment under FECA due to the accepted spinal conditions.

In a medical report dated July 23, 2024, Dr. Patterson diagnosed low back pain, lumbar disc herniation, and lumbar radiculopathy. He indicated that appellant underwent a lumbar epidural steroid injection on July 3, 2024.

By decision dated August 14, 2024, OWCP denied appellant's claim for a schedule award, finding that the evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

On September 13, 2024 appellant filed a Form CA-7 for disability from work on July 3, 2024. The accompanying time analysis form (Form CA-7a) indicated that she used five hours of leave without pay on July 3, 2024 for an epidural procedure.

By decision dated December 11, 2024, OWCP denied appellant's disability claim, finding that the medical evidence of record was insufficient to establish disability from work on July 3, 2024, causally related to the accepted October 10, 2017 employment injury.

LEGAL PRECEDENT -- ISSUE 1

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.⁵

⁵ 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).

The schedule award provisions of FECA⁶ and its implementing regulations⁷ 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.⁸

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.⁹ However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.¹⁰ 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 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.¹¹

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 grade modifiers based on functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS).¹² The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹³

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.¹⁴

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

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 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).

¹⁰ *Supra* note 8 at Chapter 2.808.5c(3) (March 2017).

¹¹ *Supra* note 8 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).

¹² 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).

¹³ A.M.A., *Guides* 521.

¹⁴ *See supra* note 8 at Chapter 2.808.6f (March 2017); *see also J.T.*, Docket No. 17-1465 (issued September 25, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

ANALYSIS -- ISSUE 1

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 his April 19, 2024 report, Dr. Schlatterer opined that, on physical examination, appellant had no sensory or motor deficits in her upper or lower extremities. The Board finds that he therefore properly concluded that under *The Guides Newsletter*, appellant had no ratable permanent impairment of the upper or lower extremities based on neurologic deficits of sensory and motor loss.¹⁵ Dr. Schlatterer also opined that she had 30 percent whole person permanent impairment due to her cervical and lumbar 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.¹⁶ Accordingly, the Board finds that Dr. Schlatterer's whole person impairment rating does not comport with OWCP's procedures and is insufficient to establish permanent impairment.¹⁷

In accordance with its procedures, OWCP properly routed the case record to Dr. Harris, its DMA, who opined that appellant had no permanent impairment. Dr. Harris found that pursuant to *The Guides Newsletter*, appellant was not entitled to a schedule award for a spinal nerve impairment based on Dr. Schlatterer's normal sensory and motor examination findings. He also noted that FECA did not allow a schedule award for spinal pain. The Board notes that Table 2 of *The Guides Newsletter* does not provide that pain alone is a ratable permanent impairment, in the absence of sensory and motor deficits. Dr. Harris agreed with Dr. Schlatterer that there was no permanent impairment of any spinal nerve due to motor or sensory deficits due to a spinal nerve, and thus no permanent impairment under FECA due to the accepted spinal conditions. He also properly found that appellant was not entitled to a whole person impairment, under FECA. The Board finds that the DMA properly used Dr. Schlatterer'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 her upper or lower extremities due to either a motor or sensory deficit of the spinal nerves.¹⁸

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 her 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.

¹⁵ *T.T.*, Docket No. 24-0079 (issued April 1, 2024).

¹⁶ *Supra* note 9.

¹⁷ 5 U.S.C. § 8101(19); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

¹⁸ *J.U.*, Docket No. 21-1298 (issued February 16, 2023).

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA¹⁹ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²⁰

The term “disability” is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.²¹ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.²² 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.²³

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.²⁴

Section 8103 of FECA provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.²⁵ A claimant is entitled to compensation for any time missed from work due to medical examination or treatment for an employment-related condition.²⁶ However, OWCP’s obligation to pay for expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition.²⁷ Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.²⁸ The evidence should establish that a claimant attended an examination or treatment for the accepted work injury on the dates claimed

¹⁹ *Supra* note 1.

²⁰ *See S.F.*, Docket No. 20-0347 (issued March 31, 2023); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

²¹ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

²² *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

²³ *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

²⁴ *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

²⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013); *see S.M.*, Docket No. 17-1557 (issued September 4, 2018).

²⁶ *H.S.*, Docket No. 23-0557 (issued October 5, 2023); *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981).

²⁷ *Id.*; *see also S.M.*, *supra* note 25.

²⁸ *Supra* note 25 at Chapter 2.901.19a(3).

in order for compensation to be payable.²⁹ For a routine medical appointment, a maximum of four hours of compensation may be allowed.³⁰ However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care. The claims for wage loss should be considered on a case-by-case basis.³¹

ANALYSIS -- ISSUE 2

The Board finds that appellant has met her burden of proof to establish entitlement to up to four hours of wage-loss compensation on July 3, 2024, for medical treatment of her accepted employment-related conditions.

Appellant submitted a June 28, 2024 medical report by Dr. Patterson who indicated that she was scheduled to undergo a repeat L4-5 epidural injection on July 3, 2024. In a subsequent medical report dated July 23, 2024, Dr. Patterson diagnosed lumbar disc herniation and lumbar radiculopathy and indicated that appellant underwent a lumbar epidural steroid injection on July 3, 2024.

As noted above, for a routine medical appointment, a maximum of four hours of compensation may be allowed.³² The Board finds that the evidence from Dr. Patterson is sufficient to establish entitlement to wage-loss compensation for up to four hours on July 3, 2024 to attend a medical appointment for treatment of her accepted employment-related conditions.

The Board further finds, however, that appellant has not met her burden of proof to establish the remaining claimed disability from work on July 3, 2024, causally related to her accepted October 10, 2017 employment injury. In his medical report dated July 23, 2024, Dr. Patterson diagnosed low back pain, lumbar disc herniation, and lumbar radiculopathy. He indicated that appellant underwent a lumbar epidural steroid injection on July 3, 2024. However, Dr. Patterson did not provide an opinion on causal relationship between appellant's remaining claimed disability and the accepted October 10, 2017 employment injury. 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.³³ As such Dr. Patterson's report is of no probative value and is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish the remaining claimed disability, the Board finds that appellant has not met her burden of proof in this regard.

²⁹ *J.B.*, Docket No. 22-1301 (issued March 26, 2024); *A.F.*, Docket No. 20-0522 (issued November 4, 2020).

³⁰ *Supra* note 19 at Chapter 2.901.19c.

³¹ *Supra* note 19.

³² *Supra* note 19 at Chapter 2.901.19c.

³³ *P.L.*, Docket No. 22-0337 (issued September 9, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

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.

CONCLUSION

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. The Board further finds that appellant has met her burden of proof to establish entitlement to up to four hours of wage-loss compensation on July 3, 2024, for medical treatment of her accepted employment-related conditions. The Board additionally finds that appellant has not met her burden of proof to establish the remaining claimed disability from work on July 3, 2024, causally related to her accepted October 10, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2024 decision of the Office of Workers' Compensation Programs is affirmed. The December 11, 2024 decision is affirmed in part and reversed in part.

Issued: March 13, 2025
Washington, D.C.

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