

FACTUAL HISTORY

On June 17, 2009 appellant, then a 53-year-old medical clerk, filed an occupational disease claim (Form CA-2) alleging that on May 26, 2009, he sustained a lumbar sprain due to factors of his federal employment, including sitting in a chair that was too small. He noted that he first became aware of his condition on May 26, 2009, and realized its relation to his federal employment on May 28, 2009. OWCP accepted the claim for lumbar sprain.

By decision dated January 11, 2012, OWCP granted appellant a schedule award for 10 percent permanent impairment of the left lower extremity. This award was based on findings related to lumbar radiculopathy affecting the left lower extremity.

By decision dated October 24, 2014, OWCP granted appellant a schedule award for an additional 11 percent impairment of the left lower extremity, for a total 21 percent impairment, based on findings of sensory and motor deficits at L4, L5, and S1.

By decision dated October 11, 2017, OWCP granted appellant a schedule award for eight percent permanent impairment of the right lower extremity, and zero percent additional permanent impairment of the left lower extremity, based on clinical and electrodiagnostic findings of sensory deficits on the right at L4, L5, and S1.

On June 11, 2018 appellant filed a claim for compensation (Form CA-7) for an additional schedule award.

On August 21, 2018 OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Simon Finger, a Board-certified orthopedic surgeon, for a second opinion examination and permanent impairment evaluation according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*)² and *The Guides Newsletter, Rating Spinal Nerve Impairment Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*).

In a September 20, 2018 report, Dr. Finger noted appellant's history of injury and medical treatment, and noted his review of the SOAF. He performed a physical examination of appellant's lower extremities and found that appellant had reached maximum medical improvement (MMI). For the right lower extremity, he diagnosed lumbar radiculopathy with mild sensory deficits at L4-5 and S1 and a mild motor deficit at L5. Utilizing the Combined Values Chart, he found a total 8 percent permanent impairment of the right lower extremity. Regarding the left lower extremity, Dr. Finger found mild motor and sensory deficits at L4, L5, and S1. Applying the Combined Values Chart, he found a total 21 percent permanent impairment. Dr. Finger concluded that the final permanent impairment ratings were 8 percent for the right lower extremity and 23 percent for the left lower extremity.

² A.M.A., *Guides* (6th ed. 2009).

On October 10, 2018 OWCP routed Dr. Finger's report and the medical record to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for a permanent impairment rating.

In an October 12, 2018 report, Dr. Katz concurred with Dr. Finger's permanent impairment rating of 21 percent and opined that appellant had no additional impairment of the lower extremities. He noted that Dr. Finger's reference to 23 percent permanent impairment was incorrectly stated.

By decision dated November 16, 2018, OWCP denied appellant's claim for an increased schedule award as the medical evidence did not support an additional percentage of permanent impairment to either lower extremity.

Following the submission of additional medical evidence, OWCP obtained a second opinion report dated October 16, 2019 by Dr. Joyti Pham, a Board-certified physiatrist, who found additional permanent impairment of both lower extremities. In a November 27, 2019 report, Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), found that Dr. Pham did not perform a proper sensory examination. He opened that appellant had no additional impairment of either lower extremity.

By decision dated December 10, 2019, OWCP denied appellant's claim for an additional schedule award. Appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated February 7, 2020, OWCP's hearing representative set aside the December 10, 2019 decision and remanded the case for additional medical development.

On June 9, 2020 OWCP referred appellant, along with a SOAF, the medical record, and a series of questions to Dr. Christopher E. Cenac, Sr., a Board-certified orthopedic surgeon, for a second opinion examination and permanent impairment evaluation according to the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*.

In a June 19, 2020 report, Dr. Cenac noted appellant's history of injury and medical treatment and reviewed the SOAF. He performed a physical examination of appellant's lower extremities and diagnosed a resolved temporary aggravation of preexisting lumbar degenerative disc disease. Dr. Cenac concurred with Dr. Katz' October 12, 2018 impairment rating of 21 percent permanent impairment of the left lower extremity and 8 percent permanent impairment of the right lower extremity.

On July 27, 2020 OWCP routed Dr. Cenac's report and the medical record to Dr. Katz as DMA for an impairment rating.

In an August 3, 2020 report, Dr. Katz concurred with Dr. Cenac's findings and impairment rating.

By decision dated August 6, 2020, OWCP denied appellant's claim for an additional schedule award.

On November 13, 2024 appellant filed a claim for compensation (Form CA-7) for an additional schedule award.

On February 28, 2025 OWCP referred appellant, along with a SOAF, the medical record, and a series of questions to Dr. Finger for an updated second opinion examination and permanent impairment evaluation according to the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*.

In an April 10, 2025 report, Dr. Finger related appellant's history of injury and medical treatment, noted his review of the SOAF, and performed a physical examination of the lower extremities. He opined that appellant had reached MMI. Dr. Finger reiterated the permanent impairment ratings set forth in his September 20, 2018 report, with final combined impairment ratings of 8 percent permanent impairment of the right lower extremity and 23 percent permanent impairment of the left lower extremity.

On April 29, 2025 OWCP routed Dr. Finger's report and the medical record to Dr. Katz as DMA for an impairment rating.

In a May 6, 2025 report, Dr. Katz concurred with Dr. Finger's findings and application of the A.M.A., *Guides*, but found that Dr. Finger had incorrectly added the impairments for the left lower extremity to equal 23 percent, whereas he should have combined them to equal 21 percent. He therefore opined that appellant had no additional impairment of either lower extremity.

By decision dated June 25, 2025, OWCP denied appellant's claim for an additional schedule award. It accorded the weight of the medical evidence to Dr. Katz as the DMA.

On July 29, 2025 appellant requested reconsideration. He contended that Dr. Finger had found an increased percentage of permanent impairment.

On August 6, 2025 OWCP requested that Dr. Finger review Dr. Katz' May 6, 2025 report and submit a rationalized supplemental opinion indicating his agreement or disagreement with the DMA's opinion on the percentages of lower extremity impairment. It also directed Dr. Finger to "[p]rovide a complete narrative of the discrepancies" between his conclusions and those of Dr. Katz, in particular Dr. Katz' opinion that Dr. Finger had incorrectly added the impairments for the left lower extremity to equal 23 percent permanent impairment, whereas he should have combined the left lower extremity impairments to equal 21 percent permanent impairment. OWCP afforded Dr. Finger 30 days to submit the requested report. OWCP did not receive a response.

By decision dated September 12, 2025, OWCP denied modification of the June 25, 2025 decision.

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. 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.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

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.⁷ 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*.⁸

Neither FECA nor its implementing regulations provide for a schedule award for impairment to the back or to the body as a whole.⁹ Furthermore, the back is specifically excluded from the definition of organ under FECA.¹⁰ 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.¹¹ The Board has recognized the adoption of this methodology for rating extremity impairment,

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ 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).

⁷ *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).

⁸ *Supra* note 6 at Chapter 2.808.5 (March 2017).

⁹ *O.W.*, Docket No. 24-0005 (issued July 31, 2025); *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).

¹⁰ *See* 5 U.S.C. § 8101(19); *see also* *E.S.*, Docket No. 25-0791 (issued November 20, 2025); *O.W.*, *id.*; *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).

¹¹ *Supra* note 6 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

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.¹²

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.¹³

ANALYSIS

The Board finds that this case is not in posture for decision.

On August 6, 2025 OWCP requested a supplemental report from Dr. Finger clarifying his opinion that appellant had sustained 8 percent permanent impairment of the right lower extremity and 23 percent impairment of the left lower extremity, as Dr. Katz, the DMA, had instead found 21 percent permanent impairment of the left lower extremity. However, it issued its September 12, 2025 denial prior to receiving the requested report from Dr. Finger.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹⁴ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁵

In this case, OWCP issued its September 12, 2025 decision denying appellant's claim for an additional schedule award prior to receiving the requested supplemental second opinion report.¹⁶ Thus it was premature for OWCP to issue its September 12, 2025 decision.

¹² *O.W.*, *supra* note 9; *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).

¹³ *Supra* note 6 at Chapter 2.808.6(f) (March 2017).

¹⁴ *See M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

¹⁵ *Id.*; *see also R.M.*, Docket No. 16-0147 (issued June 17, 2016).

¹⁶ *D.G.*, Docket No. 25-0654 (issued July 22, 2025); *S.R.*, Docket No. 24-0880 (issued October 31, 2024); *W.H.*, Docket No. 24-0855 (issued November 26, 2024).

The case must therefore be remanded to OWCP for further development.¹⁷ On remand, OWCP shall obtain the supplemental second opinion report from Dr. Finger on the issue of the appropriate percentage of permanent impairment of the lower extremities.¹⁸ Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2025 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 26, 2026
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

¹⁷ *D.G., id.; S.R., id. See F.A.*, Docket No. 22-0167 (issued December 16, 2022); *T.C.*, Docket No. 17-1906 (issued January 10, 2018); *X.Y.*, Docket No. 19-1290 (issued January 24, 2020); *K.G.*, Docket No. 17-0821 (issued May 9, 2018).

¹⁸ *L.N.*, Docket No. 24-0690 (issued November 4, 2024); *D.D.*, Docket No. 24-0203 (issued May 2, 2024); *J.W.*, Docket No. 22-0223 (issued August 23, 2022); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996).