

her schedule award; and (3) whether OWCP properly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On October 14, 2020 appellant, then a 37-year-old parcel post distribution machine clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 9, 2020 she injured her back when she lifted a heavy box while in the performance of duty. She stopped work on the date of injury and has not returned. OWCP accepted the claim for lumbar intervertebral disc displacement, stenosis, and radiculopathy. It paid appellant wage-loss compensation for total disability on the supplemental rolls effective November 24, 2020, and on the periodic rolls effective January 3, 2021.³

Appellant underwent OWCP-authorized surgeries to her lumbar spine, including microlumbar discectomy on December 16, 2020 for a large right L5-S1 herniated disc and repeat microlumbar discectomy on March 17, 2021 for recurrent right L5-S1 herniated disc.

On September 11, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On November 30, 2023 OWCP referred appellant, the medical record, and statement of accepted facts (SOAF) to Dr. Eric Orenstein, a Board-certified orthopedic surgeon, for a second opinion examination and impairment rating evaluation.

In a report dated January 24, 2024, Dr. Orenstein noted his review of the medical records and SOAF. He performed a physical examination and observed that appellant was unable to stand on her own, that her husband supported her under both axillae, and that lumbar range of motion (ROM) and reflexes could not be evaluated due to significant pain. During his sensory examination of the right lower extremity, Dr. Orenstein observed numbness over the anterior aspect of the knee, posterior aspect of the calf, plantar aspect of the foot, and medial and lateral borders of the foot and normal sensation of the dorsum of the foot. In the left lower extremity, he observed numbness over the anterior aspect of the knee, normal sensation on the dorsal aspect and medial and lateral borders of the foot, and slightly decreased sensation on the plantar aspect of the foot. During motor examination of the lower extremities, Dr. Orenstein observed 4+ out of 5 strength in the quadriceps and hamstrings, 3 out of 5 strength of the dorsiflexors, and 1 to 2+ out of 5 strength with inversion and eversion of the feet. He also noted a positive straight leg raise test on the right while sitting. Dr. Orenstein indicated that appellant's subjective complaints corresponded with the objective medical findings. He diagnosed lumbosacral radiculopathy, intervertebral lumbar disc displacement, lower back and radicular leg pain, and residual neurologic deficits in both lower extremities and physical findings consistent with a failed back syndrome. Dr. Orenstein opined that appellant reached maximum medical improvement (MMI) as of January 24, 2024, the date of his examination.

³ OWCP paid appellant wage-loss compensation at the augmented rate (3/4 or 75 percent) due to her dependent child.

Dr. Orenstein applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),⁴ and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*) to his findings and calculated impairment for the L4, L5, and S1 nerve roots of both lower extremities using the diagnosis-based impairment (DBI) methodology under proposed Table 2 for Spinal Nerve Impairment: Lower extremity impairments. For each lower extremity, he assigned a grade modifier for functional history of 3 for a severe problem requiring a walker or wheelchair for ambulation and mobilization, and a grade modifier for clinical studies of 2 for clinical studies confirming the diagnosis with moderate pathology. For the right L4 nerve root, Dr. Orenstein found five percent permanent impairment for moderate sensory deficits and nine percent permanent impairment for mild motor deficits, for a total of 14 percent right lower extremity impairment. For the right L5 nerve root, he found no sensory impairment and 13 percent permanent impairment of the right lower extremity for moderate motor deficits. For the right S1 nerve root, Dr. Orenstein found four percent permanent impairment due to severe sensory deficits and 10 percent permanent impairment due to moderate motor deficits, for a total of 14 percent permanent impairment of the right lower extremity. He concluded that appellant had a total of 36 percent permanent impairment of the right lower extremity.

Regarding the left lower extremity, Dr. Orenstein found two percent permanent impairment for mild sensory deficits and nine percent permanent impairment for mild motor deficits of the L4 nerve root, for a total of 11 percent permanent impairment of the left lower extremity. For the left L5 nerve root, he found no sensory deficit and 13 percent permanent impairment of the left lower extremity for moderate motor deficits. For the left S1 nerve root, Dr. Orenstein found one percent permanent impairment for mild sensory deficits and 10 percent permanent impairment for moderate motor deficits, for a total of 11 percent permanent impairment of the left lower extremity. He concluded that appellant had a total of 31 percent permanent impairment of the left lower extremity.

On February 29, 2024 appellant completed a financial disclosure statement (Form EN-1032) and indicated that she had not worked for any employer during the past 15 months. She also reported that she was not in receipt of annuity payments from the Office of Personnel Management (OPM).

On May 20, 2024 OWCP referred the medical record, including Dr. Orenstein's January 24, 2024 report, and a SOAF to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), to provide an impairment rating in conformity with the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*.

In a May 25, 2024 report, Dr. Harris reviewed appellant's history of injury and noted her accepted conditions and his review of Dr. Orenstein's January 24, 2024 report. He opined that she reached MMI on January 24, 2024, the date of Dr. Orenstein's impairment evaluation. Dr. Harris concurred with Dr. Orenstein's opinion that appellant had a total of 36 percent permanent impairment of the right lower extremity and 31 percent permanent impairment of the left lower extremity for sensory and motor deficits of the L4, L5, and S1 nerve roots using the DBI methodology under Table 2 of *The Guides Newsletter*. He also explained that the ROM rating

⁴ A.M.A., *Guides* (6th ed. 2009).

methodology was not applicable as it was not permitted as an alternative rating methodology for appellant's condition under the A.M.A., *Guides*.

By letter dated August 20, 2024, OWCP notified appellant that she could not receive schedule award compensation concurrently with an award for wage loss compensation for disability for the same injury. It requested that she specify in writing whether she would like to continue to receive periodic compensation payments or stop her compensation payments and proceed with a schedule award.

By letter dated September 9, 2024, appellant elected to proceed with the processing of her schedule award.

On September 20, 2024 appellant requested payment of her schedule award in a lump sum.

By letter dated September 20, 2024, OWCP confirmed its receipt of her request for a lump-sum payment of schedule award benefits and explained that lump-sum payments are made at the discretion of the Director, based on a determination of whether such a payment would be in her best interest. It requested that she provide evidence which showed that the schedule benefits were not a substitute for wages, such as proof of a return to work or receipt of an OPM annuity at a level which could meet her basic living needs.

In response to OWCP's letter, appellant submitted a Social Security Administration (SSA) benefit verification letter, which indicated that she received Social Security Disability (SSD) benefits in the amount of \$938.00 per month effective December 2023, and in the amount of \$938.70 per month effective February 2024.

On April 19, 2025 OWCP paid appellant schedule award compensation on the periodic rolls at the augmented rate for the period March 23 through April 19, 2025. The net compensation payments were \$3,177.72 every 28 days.

By decision dated May 13, 2025, OWCP granted appellant a schedule award for 36 percent permanent impairment of the right lower extremity (leg) and 31 percent permanent impairment of the left lower extremity (leg). It explained that a claimant could not receive compensation for total disability and compensation for a schedule award for concurrent date ranges for the same injury. OWCP noted a date of MMI of January 24, 2024, but indicated that the starting date of the schedule award was March 23, 2025 as appellant had already received wage-loss compensation through March 22, 2025. The award ran for 192.96 weeks from March 23, 2025 through December 2, 2028. The decision noted that the schedule award would be paid at the augmented compensation rate (75 percent) for employees with an eligible dependent.

On May 14, 2025 appellant again requested payment of her schedule award in a lump sum.

By decision dated July 10, 2025, OWCP denied appellant's request for a lump-sum payment of her schedule award, finding that the evidence did not establish that a lump-sum payment was in her best interest.

On August 18, 2025 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review *via* the Employees' Compensation Operations and Management Portal (ECOMP), with respect to the July 10, 2025 decision. In support thereof, she

submitted an updated SSA benefit verification letter, which indicated that she received SSD benefits in the amount of \$1,236.70 per month effective December 2024.

By decision dated September 29, 2025, OWCP denied appellant's request for a review of the written record, finding that the request was not made within 30 days of the July 10, 2025 decision and, therefore, was untimely filed. It further exercised its discretion and determined that the issue in the case could equally well be addressed through a request for reconsideration before OWCP along with the submission of new evidence.

LEGAL PRECEDENT -- ISSUE 1

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. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁷ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁸ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.⁹

Neither FECA nor its implementing regulations provide for a schedule award for impairment to the back or to the body as a whole.¹⁰ However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.¹¹ 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

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* See also *A.S.*, Docket No. 20-1068 (issued April 15, 2025); *R.C.*, Docket No. 20-0274 (issued May 13, 2021) *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁸ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

⁹ *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

¹⁰ *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).

¹¹ *Supra* note 8 at Chapter 2.808.5c(3) (March 2017).

and/or lower extremities. The appropriate tables for rating spinal nerve extremity impairment are incorporated in the Federal (FECA) Procedure Manual.¹²

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a 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.¹³

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish greater than 36 percent permanent impairment of the right lower extremity or 31 percent permanent impairment of the left lower extremity, for which she previously received schedule award compensation.

In an impairment rating evaluation dated January 24, 2024, Dr. Orenstein cited the A.M.A. *Guides* and *The Guides Newsletter*. On the right, he found moderate sensory and motor deficits at L4, which equaled 14 percent permanent impairment, moderate motor deficits at L5, which equaled 13 percent permanent impairment, and severe sensory and moderate motor deficits at S1, which equaled 14 percent permanent impairment. On the left, Dr. Orenstein found mild sensory and motor deficits at L4, which equaled 11 percent permanent impairment, moderate motor deficits at L5, which equaled 13 percent permanent impairment, and mild sensory and motor deficits at S1, which equaled 11 percent permanent impairment. In applying the A.M.A. *Guides* and *The Guides Newsletter* to the lower extremities, he found 36 percent permanent impairment of the right lower extremity and 31 percent permanent impairment of the left lower extremity.

On May 25, 2024 Dr. Harris, as DMA, reviewed Dr. Orenstein's impairment rating and concurred with his impairment rating and methodology. He concluded that appellant had 36 percent permanent impairment of the right lower extremity and 31 percent permanent impairment of the left lower extremity.

The Board finds that Drs. Orenstein and Harris properly calculated appellant's lower extremity impairment in accordance with the standards of the sixth edition of the A.M.A., *Guides*. As there is no current medical evidence of record in conformance with the sixth edition of the A.M.A., *Guides* showing greater than 36 percent permanent impairment of her right lower extremity or 31 percent permanent impairment of her left lower extremity, 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 a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

¹² *Supra* note 10 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).

¹³ *See supra* note 8 at Chapter 2.808.6f (February 2013). *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).

LEGAL PRECEDENT -- ISSUE 2

Section 8135(a) of FECA,¹⁴ which allows for the discharge of the liability of the United States by payment of lump sums, affords the Secretary of Labor discretionary authority to use lump sums as a means of fulfilling the responsibility of OWCP in administering FECA. OWCP's regulations provide that there is no absolute right to a lump-sum payment with respect to a schedule award.¹⁵ A lump-sum payment may be made to an employee entitled to a schedule award where OWCP determines that such a payment is in the employee's best interest.¹⁶ The regulations provide that a lump-sum payment generally will be considered in the employee's best interest only where the employee does not rely upon compensation payments as a substitute for lost wages (that is, the employee is working or receiving annuity payments).¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for a lump-sum payment of her schedule award.

OWCP granted appellant a schedule award for 192.96 weeks of compensation commencing March 23, 2025. She requested a lump-sum payment. As noted, there is no provision for an advanced payment of a portion of a schedule award. OWCP does have discretionary authority to grant a single, lump-sum payment for a schedule award if it is determined to be in the employee's best interest.¹⁸

The record reveals that appellant was not working or receiving annuity payments at the time of OWCP's July 10, 2025 decision denying her request for a lump-sum payment. In an EN-1032 form received on February 29, 2024, she did not report any wages from employment or receipt of retirement annuity payments. Appellant submitted benefit verification letters pertaining to her receipt of monthly SSD payments but has provided no evidence that she was working or receiving a regular income sufficient to meet her basic living expenses. Because the evidence of record establishes that she would rely on the schedule award payments as a substitute for lost wages, the Board finds that OWCP did not abuse its discretion in denying the request for a lump-sum payment.¹⁹ Pursuant to 20 C.F.R. § 10.422(b), OWCP properly denied the request for a lump-sum payment.

LEGAL PRECEDENT -- ISSUE 3

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance

¹⁴ 5 U.S.C. § 8135.

¹⁵ 20 C.F.R. § 10.422(b).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* See also *E.S.*, Docket No. 24-0500 (issued April 1, 2024).

¹⁹ See *E.S., id.; D.E.*, Docket No. 12-0158 (issued June 8, 2012).

of the decision, to a hearing on his [or her] claim before a representative of the Secretary.”²⁰ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.²¹ A claimant is entitled to a hearing or a review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark, or other carrier’s date marking, or the date received in ECOMP, and before the claimant has requested reconsideration.²² Although there is no right to a review of the written record or an oral hearing, if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant’s request and must exercise its discretion.²³

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly denied appellant’s request for a review of the written record before an OWCP hearing representative as untimely filed, pursuant to 5 U.S.C. § 8124.

OWCP’s regulations provide that the request for a hearing or review of the written record must be made within 30 days of the date of the decision for which a review is sought. Because appellant’s request for a review of the written record was filed *via* ECOMP on August 18, 2025, it postdated OWCP’s July 10, 2025 decision by more than 30 days and, accordingly, was untimely. Appellant was, therefore, not entitled to a review of the written record as a matter of right.²⁴

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.²⁵ The Board finds that, in the September 29, 2025 decision, OWCP properly exercised its discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration, along with the submission of additional evidence.

The Board has held that the only limitation on OWCP’s authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.²⁶ The Board finds that the evidence of record does not indicate that OWCP abused its discretion in connection with its denial of appellant’s request for a review of the written record.

²⁰ *Supra* note 1 at § 8124(b)(1).

²¹ 20 C.F.R. §§ 10.616, 10.617.

²² *Id.* at § 10.616(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

²³ *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *M.G.*, Docket No. 17-1831 (issued February 6, 2018); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

²⁴ *See K.B.*, Docket No. 21-1038 (issued February 28, 2022); *M.F.*, Docket No. 21-0878 (issued January 6, 2022); *see also P.C.*, Docket No. 19-1003 (issued December 4, 2019).

²⁵ *Id.*

²⁶ *Id.*

Accordingly, the Board finds that OWCP properly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish greater than 36 percent permanent impairment of the right lower extremity or 31 percent permanent impairment of the left lower extremity, for which she previously received schedule award compensation. The Board further finds that OWCP properly denied appellant's request for a lump-sum payment of her schedule award. The Board also finds that OWCP properly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the May 13, July 10, and September 29, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 27, 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