

May 11, 2010 and returned in a limited-duty position on October 26, 2010. OWCP accepted the claim for lumbar sprain and cervical strain and paid appropriate benefits.

Appellant filed a claim for a schedule award on June 15, 2011. In a September 23, 2011 report, Wayne MacMasters, a physical therapist, opined that appellant had one percent whole person impairment for lumbar pathology under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He indicated that there was no objective basis for a lower extremity impairment. In a September 23, 2011 lumbar impairment rating summary form, Dr. Tushar U. Gajjar, a Board-certified anesthesiologist, opined that appellant had one percent whole person impairment under Table 17-4 for a class 1 impairment class. He noted that appellant had negative one grade modifier adjustments.

In a February 8, 2012 letter, OWCP advised appellant of the deficiencies in the evidence and provided him an opportunity to provide the necessary evidence to establish his schedule award claim.

In response, appellant submitted an August 23, 2012 report from Dr. Daniel E. Carr, a Board-certified orthopedic surgeon. Examination findings revealed paraspinal muscle spasms right greater than left involving of latissimus and the trapezius. Severe loss of motion of the lumbar spine was noted with no numbness or tingling and intact reflexes and sensation. Full range of motion was noted in the cervical spine with good upper extremity strength in the shoulders and scapular muscles. Based on loss of range of motion of the lumbar spine and loss of strength without neurologic deficit, Dr. Carr opined that appellant had eight percent impairment to his lumbar spine secondary to the work-related injury.

In a September 20, 2012 report, an OWCP medical adviser, reviewed the medical evidence of file along with a statement of accepted facts. He noted that Dr. Carr advised eight percent impairment of the lumbar spine with no mention of any lower or upper extremity impairment. The medical adviser noted that the report indicated that appellant had no numbness or tingling, good upper extremity strength in the shoulders and scapula muscles and that sensation was intact. He stated that it should be noted that appellant had impairment as it was noted there was loss of strength without neurological deficit. The medical adviser stated that the eight percent impairment for the lumbar spine was a whole body impairment and not helpful under FECA guidelines. He noted that there was no mention of any upper or lower extremity impairment and a review of the file indicated that the September 23, 2011 impairment rating advised zero percent impairment for the lower extremities and no mention of upper extremity impairment was given. Based on a review of the record, the medical adviser found there was no credible impairment of the upper or lower extremities based on the accepted conditions of cervical and lumbar sprain. He noted that appellant was previously given a schedule award for the right lower extremity concerning a medial meniscus tear of the knee. As there was no ratable upper extremity or lower extremity impairment based on cervical and lumbar sprain, the date of maximum medical improvement was not addressed.

By decision dated October 23, 2012, OWCP denied the schedule award claim on the basis that the requirements had not been met for entitlement to a schedule award.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.² FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.³ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.⁴

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or the implementing regulations.⁵ Neither, FECA nor the 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.⁶ However, a schedule award is permissible where the employment-related back condition affects the upper and/or lower extremities.⁷

The sixth edition of the A.M.A., *Guides* (2008) provides a specific methodology for rating spinal nerve extremity impairment.⁸ It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine.⁹ The impairment is premised on evidence of radiculopathy affecting the upper and/or lower extremities.¹⁰

ANALYSIS

OWCP accepted that appellant sustained a lumbar sprain and cervical strain on May 11, 2010. Appellant claimed a schedule award, which OWCP denied in an October 23, 2012 decision.

² For a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

³ 20 C.F.R. § 10.404.

⁴ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

⁵ *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

⁶ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a); see *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

⁷ Federal (FECA) Procedure Manual, Part 2, *supra* note 4 at Chapter 2.808.6a(3).

⁸ Federal (FECA) Procedure Manual, Part 3, *supra* note 4 at Chapter 3.700, Exhibit 4.

⁹ *Id.*

¹⁰ *Id.*

In separate reports dated September 23, 2011, Mr. MacMasters¹¹ and Dr. Gajjar opined that appellant had one percent whole person impairment for lumbar pathology. In his August 23, 2012 report, Dr. Carr opined that appellant had eight percent impairment to his lumbar spine secondary to the work-related injury. FECA, however, does not provide for a schedule award for the back or spine.¹² Thus, these reports are of little probative value.

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.¹³ While FECA does not provide for a schedule award for the back or spine, impairment of the extremities due to a spinal injury may be compensable.¹⁴ The medical adviser reviewed the medical evidence of record and opined that there was no ratable upper extremity or lower extremity impairment based on cervical and lumbar sprain. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP procedures indicate that *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment using the sixth edition (July to August 2009) is to be applied.¹⁵ Impairments are rated premised on evidence of radiculopathy affecting the upper and/or lower extremities.¹⁶ The medical adviser found that Dr. Carr failed to mention any lower or upper extremity impairment and there was no objective evidence to support any impairment. The medical adviser further found that the September 23, 2011 reports failed to mention any upper extremity impairment and one report advised zero percent impairment for the lower extremities. Thus, the medical adviser properly concluded that there was no credible impairment of the upper or lower extremities based on the accepted conditions of cervical and lumbar sprain.

The medical evidence does not establish that appellant has permanent impairment to a scheduled member of the body causally related to his accepted injury. Consequently, appellant has not established entitlement to a schedule award.

Appellant may request a schedule award or an increased schedule award based on evidence of a new exposure or medical evidence showing a progression of an employment-related condition resulting in permanent impairment or increased impairment.

¹¹ 5 U.S.C. § 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. As nurses, physician's assistants, physical and occupational therapists are not "physicians" as defined by FECA, their opinions regarding medical issues are of no probative medical value. See *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹² See *Thomas J. Engelhart*, 50 ECAB 319 (1999).

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

¹⁴ See *Thomas J. Engelhart*, *supra* note 11.

¹⁵ See *G.N.*, Docket No. 10-850 (issued November 12, 2010); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1, note 5 (January 2010).

¹⁶ See *N.F.*, Docket No. 13-129 (issued March 15, 2013).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish entitlement to a schedule award for permanent impairment.

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board