

FACTUAL HISTORY

Appellant, a 41-year-old foreman, injured his back and left ring finger on September 27, 2002 when he slipped and fell while walking on a damaged metal step. He filed a claim for benefits on October 1, 2002, which OWCP accepted for thoracic strain, herniated/bulging disc of the thoracic region and a fractured left ring finger. A January 6, 2003 magnetic resonance imaging (MRI) scan of the thoracic region, noted a mild left paracentral disc bulge at T7-8 and a mild right paracentral disc bulge at T6-7, without impingement.

In a report dated July 23, 2003, Dr. Leonid Selya, an attending orthopedic surgeon, stated that appellant had a herniated disc at T6-7 and T7-8 secondary to the September 27, 2002 employment injury. In reports dated January 28, 2004, February 20, 2008 and January 21, 2009, He opined that appellant was dealing with the residuals of acute herniations at T6-7 and T7-8, causally related to his September 27, 2002 work injury, as well as discogenic pain.

OWCP referred appellant to Dr. Robert J. Smith, Board-certified in orthopedic surgery, for a second opinion examination, in order to determine his current condition and the residuals of his accepted conditions. In a May 4, 2009 report, Dr. Smith noted that the claim had been accepted for a finger fracture, back strain and herniated and bulging discs in the thoracic region. He stated, however, that the results of the January 2003 thoracic MRI scan showed bulges at the T6-7 and T7-8 without any evidence of neurological impingement and no evidence of fracture. The MRI scan did not explicitly state whether appellant had an acute herniation of the thoracic spine, as Dr. Selya found. Dr. Smith stated that there was no evidence that appellant had any ongoing back strain and noted that a 2002 functional capacity examination showed that he was capable of light- to medium-duty work. He agreed that appellant could perform such work given his ongoing symptomatology and provided work restrictions based on his nonindustrial degenerative disc disease, as opposed to any specific residuals from the September 2002 employment injury.

OWCP found a conflict in the medical opinion between Dr. Selya and Dr. Smith as to appellant's residuals and work limitations from the September 27, 2002 employment injury. It referred appellant to Dr. Michael J. Franchetti, a Board-certified orthopedic surgeon, for an impartial examination to resolve the conflict. In an October 14, 2009 report, Dr. Franchetti stated that appellant sustained a thoracic strain due to his September 27, 2002 injury, in addition to a fractured left finger which had healed with no residuals. He concurred with Dr. Smith's opinion that, although appellant's injury was accepted for a bulging disc condition, it was at most a minimal bulge which was not causing any neural compression. The bulging disc condition was due to age-related degenerative changes and not traumatic in origin. Dr. Franchetti agreed with Dr. Smith that appellant clinically had no ongoing thoracic spinal injury or strain due to the September 27, 2002 work injury.

By decision dated December 7, 2009, OWCP terminated appellant's compensation. By decision dated June 8, 2010, OWCP's hearing representative affirmed the December 7, 2009 termination decision. In a decision dated June 1, 2011,² the Board affirmed OWCP's June 8,

² Docket No. 10-1925 (issued June 1, 2011).

2010 decision. The Board found that Dr. Franchetti's referee opinion established that appellant's accepted herniated/bulging discs of the thoracic region had ceased and that his report was entitled to the weight of the evidence. The facts of this case as set forth in the Board's June 1, 2011 decision are incorporated by reference.

On August 17, 2011 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his upper extremities.

By letter dated September 6, 2011, OWCP informed appellant that it required additional medical evidence in support of his claim for a schedule award. It asked him to submit a medical report which described his current condition and addressed whether he had any permanent impairment resulting from his accepted, work-related condition. OWCP informed appellant that the report should include an impairment rating using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). It requested that he submit the report within 30 days. Appellant did not respond.

By decision dated November 22, 2011, OWCP found that appellant had no ratable impairment causally related to an accepted thoracic condition and was not entitled to a schedule award.

On April 11, 2012 appellant, through his attorney, requested reconsideration.

In a report dated January 5, 2012, Dr. Stuart J. Goodman, Board-certified in orthopedic surgery, found that appellant had an 18 percent whole person impairment pursuant to the A.M.A., *Guides*. He reviewed the history of injury and noted that Dr. Selya had diagnosed thoracic sprain and disc herniations at T6-7 and T7-8 based on an MRI scan. Dr. Goodman advised that appellant continued to experience chronic, severe thoracic pain and had significant limitations in all levels of activity. Pursuant to Table 17-3, page 567 of the A.M.A., *Guides*,³ the regional grid which rates thoracic spine impairments, appellant had a class 4 impairment which represented an 18 percent whole person impairment. This translated to a 90 percent permanent impairment of the thoracic spine region.

By decision dated August 8, 2012, OWCP denied modification of the November 22, 2011 decision. It reviewed Dr. Goodman's January 5, 2012 report and found that his impairment rating was related to the thoracic spine, a region that was not a listed scheduled member under FECA. Therefore appellant did not have a ratable impairment of any extremity pursuant to the sixth edition of the A.M.A., *Guides*.

LEGAL PRECEDENT

The schedule award provision of FECA⁴ and its implementing regulations⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

³ A.M.A., *Guides* 567

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides*. (6th ed. 2009).

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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁷

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under FECA for injury to the spine.⁸ In 1960, amendments to FECA modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of FECA include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.⁹

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP procedures indicate that *The AMA Guides Newsletter* "Rating Spinal Nerve Extremity Impairment using the sixth edition" (July to August 2009) is to be applied.¹⁰

ANALYSIS

OWCP accepted that appellant sustained the conditions of thoracic strain and bulging disc conditions. Appellant filed a claim for a schedule award due to his accepted injury. He submitted the January 5, 2012 report of Dr. Goodman, who rated an 18 percent whole person impairment of the thoracic spine. This report, however, did not provide an impairment rating of any extremity or schedule member as defined at section 8107. Dr. Goodman found that appellant chronic, severe thoracic pain with significant activity limitations. He stated that appellant had a class 4 impairment under Table 17-3 of the A.M.A., *Guides*. The Board notes that a class 4 thoracic impairment is based on intervertebral disc herniation.

⁶ *Id.*

⁷ *Veronica Williams*, 56 ECAB 367, 370 (2005).

⁸ *Pamela J. Darling*, 49 ECAB 286 (1998).

⁹ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

¹⁰ *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). *The Guides Newsletter* is included as Exhibit 4.

OWCP reviewed Dr. Goodman's report in its August 8, 2012 decision and properly found that a schedule award is not payable under FECA for any injury to the spine¹¹ or based on whole person impairment.¹² While appellant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine. The medical evidence does not establish such impairment.¹³ Dr. Goodman's January 5, 2012 report did not provide sufficient findings to meet the standards for rating an upper extremity impairment in accordance with the sixth edition of the A.M.A., *Guides*. OWCP properly determined that his report did not provide a basis for a schedule award under FECA.¹⁴ The Board will affirm the August 8, 2012 decision.

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

CONCLUSION

The Board finds that appellant did not establish permanent impairment of a scheduled member causally related to his accepted thoracic disc conditions.

¹¹ *Supra* note 8.

¹² *N.M.*, 58 ECAB 273, note 9 (2007).

¹³ *Supra* note 9.

¹⁴ The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. *See Peter C. Belkind*, 56 ECAB 580, 585 (2005).

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board