



## ISSUE

The issue is whether appellant has established that he sustained more than a total four percent permanent impairment of the bilateral lower extremities, for which he received schedule awards.

## FACTUAL HISTORY

OWCP accepted that appellant, then a 46-year-old maintenance general foreman, sustained an aggravation of degenerative disc disease at L4-5 and L5-S1 with surgery in the performance of duty on January 22, 1988. It placed him on the periodic rolls and paid him appropriate compensation benefits.

OWCP referred appellant to Dr. John R. Chu, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of his employment-related condition. In his February 17, 2004 report, Dr. Chu diagnosed status post right L4-5 laminectomy and disc excision with persistent low back pain and right lower extremity radicular symptoms. He opined that appellant was capable of light-duty work with permanent restrictions of lifting up to 50 pounds occasionally for two hours per day.

In an April 5, 2004 report, Dr. John J. Champlin, a Board-certified family practitioner, diagnosed low back pain, herniated nucleus pulposus (HNP), status post discectomy and sciatica. He indicated that appellant's neurological findings were consistent with L3-4 nerve root impingement revealed in a July 20, 1994 magnetic resonance imaging (MRI) scan report. Dr. Champlin opined that appellant's condition was likely aggravated by sitting and standing activities.

By decision dated February 27, 2006, OWCP finalized a decision to reduce compensation benefits as appellant had the capacity to earn wages as a cost estimator clerk. It determined that he had a 77 percent loss of wage-earning capacity and his compensation was reduced to a net compensation of \$883.00 every four weeks.

On January 3, 2013 appellant filed a claim for a schedule award.

In support of his claim, appellant submitted reports dated June 23, 2011 through January 21, 2013 from Dr. Champlin, who diagnosed lumbago, sciatica, spinal stenosis of unspecified region and other postsurgical status. Dr. Champlin indicated that appellant's condition had worsened and reported numbness in both feet and distal calf, especially on the right.

Appellant also submitted an August 25, 2011 MRI scan report of the lumbar spine which showed multilevel degenerative disc and facet disease.

On December 4, 2012 Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, diagnosed HNP at L4-5, surgically treated, with chronic radiculopathy, right. He opined that under the July 2009 newsletter of the sixth edition of the A.M.A., *Guides* appellant's L5 nerve root condition placed him in a class 1, level C impairment rating, equating to a six percent

permanent impairment of the right lower extremity for moderate sensory deficit and a three percent permanent impairment of left lower extremity for mild sensory deficit.

In a February 1, 2013 report, OWCP's medical adviser reviewed the medical evidence of record and explained that according to the July 2009 newsletter of the sixth edition of the A.M.A., *Guides*, appellant's moderate sensory deficit of the right lower extremity would correspond to class 1 default rating of three percent permanent impairment and his mild sensory deficit of the left lower extremity would correspond to a class 1 default rating of one percent permanent impairment. The medical adviser found that the grade modifier for Functional History (GMFH) was 1 and grade modifiers for Physical Examination (GMPE) and grade modifier for Clinical Studies (GMCS) were not applicable, resulting in a net adjustment of 0. The medical adviser concluded that appellant had a three percent permanent impairment of the right lower extremity and a one percent permanent impairment of the left lower extremity. Appellant's date of maximum medical improvement was determined to be December 16, 2011.

Subsequently, appellant submitted reports dated January 23 through February 22, 2013 from Dr. Champlin, who reiterated his diagnoses and medical opinions.

By decision dated March 28, 2013, OWCP granted appellant a schedule award for three percent permanent impairment of the right lower extremity and a one percent permanent impairment of the left lower extremity for a total of a four percent permanent impairment of the bilateral lower extremities.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>3</sup> provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.<sup>4</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.<sup>5</sup>

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability

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<sup>3</sup> 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

<sup>4</sup> See *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000). See also 5 U.S.C. § 8107.

<sup>5</sup> See *D.T.*, Docket No. 12-503 (issued August 21, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (February 2013); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 and Exhibit 1 (February 2013).

and Health (ICF).<sup>6</sup> Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.<sup>7</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.<sup>8</sup>

The sixth edition of the A.M.A., *Guides* provides a specific methodology for rating spinal nerve extremity impairment.<sup>9</sup> It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine. 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 procedure manual.<sup>10</sup>

### ANALYSIS

OWCP accepted that appellant sustained an aggravation of degenerative disc disease at L4-5 and L5-S1 with surgery in the performance of duty on January 22, 1988. On March 28, 2013 it granted him a schedule award for three percent permanent impairment of the right lower extremity and a one percent permanent impairment of the left lower extremity for a total of a four percent permanent impairment of the bilateral lower extremities. It is appellant's burden to submit sufficient evidence to establish the extent of permanent impairment.<sup>11</sup>

On December 4, 2012 Dr. Hanley, a Board-certified orthopedic surgeon, diagnosed HNP at L4-5, surgically treated, with chronic radiculopathy, right. The noted radiculopathy stemmed from the L5 nerve root. Dr. Hanley opined that appellant's L5 nerve root condition placed him in a class 1, level C impairment rating, equating to a six percent permanent impairment of the right lower extremity for moderate sensory deficit and a three percent permanent impairment of the left lower extremity for mild sensory deficit.

In accordance with its procedures, OWCP referred the evidence of record to its medical adviser who, in a February 1, 2013 report, reviewed the clinical findings of record and explained that according to the July 2009 newsletter of the A.M.A., *Guides*, appellant's moderate sensory deficit of the right lower extremity would correspond to class 1 default rating of three percent permanent impairment and his mild sensory deficit of the left lower extremity would correspond

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<sup>6</sup> A.M.A., *Guides* (6<sup>th</sup> ed., 2009), p.3, section 1.3, *International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement*.

<sup>7</sup> *Id.* at 494-531.

<sup>8</sup> See *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

<sup>9</sup> The methodology and applicable tables were published in the July/August 2009 edition of *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition*. See *C.B.*, Docket No. 13-1516 (issued December 6, 2013).

<sup>10</sup> See Federal (FECA) Procedure Manual, Part 3, *supra* note 5 at Chapter 3.700, Exhibit 4 (January 2010).

<sup>11</sup> See *Annette M. Dent*, 44 ECAB 403 (1993).

to a class 1 default rating of one percent permanent impairment. The medical adviser found that the GMFH was 1 and GMPE and GMCS were not applicable, resulting in a net adjustment of 0. The medical adviser concluded that appellant had a three percent permanent impairment of the right lower extremity and a one percent permanent impairment of the left lower extremity.

The Board finds that OWCP's medical adviser applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Hanley's clinical findings. The medical adviser's calculations were mathematically accurate. There is no medical evidence of record that under the appropriate tables of the sixth edition of the A.M.A., *Guides* appellant has a greater percentage of permanent impairment. The medical adviser explained that Dr. Hanley's ratings of six percent permanent impairment of the right lower extremity for moderate sensory deficit and a three percent permanent impairment of left lower extremity for mild sensory deficit were erroneous. Rather, appellant's moderate sensory deficit of the right lower extremity would correspond to class 1 default rating of three percent permanent impairment and his mild sensory deficit of the left lower extremity would correspond to a class 1 default rating of one percent permanent impairment under the A.M.A., *Guides*. Therefore, OWCP properly relied on the medical adviser's assessment of a total four percent permanent impairment of the bilateral lower extremities.<sup>12</sup>

The reports from Drs. Chu and Champlin do not provide an impairment rating based on the sixth edition of the A.M.A., *Guides*. Similarly, the August 25, 2011 MRI scan report does not provide an impairment rating. These reports are of no probative value regarding appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.<sup>13</sup>

There is no medical evidence that appellant has more than a total four percent permanent impairment of the bilateral lower extremities. Accordingly, he has not established that he is entitled to a schedule award greater than that previously received.<sup>14</sup>

### CONCLUSION

The Board finds that appellant has not established that he sustained more than a total four percent permanent impairment of the bilateral lower extremities, for which he received a schedule award.

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<sup>12</sup> See *M.T.*, Docket No. 11-1244 (issued January 3, 2012).

<sup>13</sup> See *Richard A. Neidert*, 57 ECAB 474 (2006) (an attending physician's report is of little probative value where the A.M.A., *Guides* are not properly followed).

<sup>14</sup> FECA provides for reduction of compensation for subsequent injury to the same body member. It provides that schedule award compensation is reduced by the compensation paid for an earlier injury where the compensation in both cases are for impairment of the same member or function and where it is determined that the compensation for the later disability in whole or part would duplicate the compensation payable for the preexisting disability. 5 U.S.C. § 8108; 20 C.F.R. § 10.404(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 28, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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