

caused or aggravated by her employment on October 14, 2010. OWCP accepted lumbago and paid benefits. Appellant returned to limited-duty work on July 23, 2011.

On June 5, 2012 appellant filed a Form CA-7, claim for a schedule award. In a March 19, 2012 report, Dr. Jagdish A. Patel, a family practitioner, noted that appellant developed pain in the low back on August 17, 2010 at work and that her job required pushing and pulling a cart weighing 100 plus pounds and lifting boxes. Appellant was first seen on August 30, 2010 and there was nothing suggestive of a preexisting condition. She last worked on January 26, 2012. Dr. Patel presented examination findings, a review of diagnostic studies and diagnosed lumbago and right S1 radiculopathy secondary to spinal and foraminal stenosis. He opined that appellant had reached maximum medical improvement as of February 21, 2012. Under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Patel rated 10 percent whole person impairment by utilizing the spinal tables in Chapter 17.

In a May 10, 2013 report, an OWCP medical adviser noted the history of injury and reviewed the medical records, including Dr. Patel's March 19, 2012 report. He noted that Dr. Patel found no clinical sensory deficit. The medical adviser opined that appellant reached maximum medical improvement on February 21, 2012. As FECA did not provide for whole person impairment ratings, he referenced the July/August 2009 *The Guides Newsletter* for Rating Spinal Nerve Extremity Impairment. Using Dr. Patel's examination findings, the medical adviser opined that appellant had three percent impairment of the right lower extremity. Utilizing the tables in Chapter 16, the medical adviser identified S1 sensory radiculopathy as a class 1 impairment with two percent default rating for moderate sensory deficit/pain involving the right S1 nerve root. Dr. Patel assigned a grade modifier 2 for functional history; a grade modifier 2 for clinical studies and noted a modifier for physical examination was considered to be nonapplicable. Utilizing the net adjustment formula, the medical adviser found a net adjustment of two which moved the impairment into a class 1, category E or three percent of the right lower extremity impairment. Dr. Patel noted that the records did not document motor atrophy or weakness of either lower extremity and there were no left lower extremity symptoms or findings for rating impairment to the left leg.

By decision dated June 11, 2013, OWCP granted appellant a schedule award for three percent impairment of the right leg. The award ran for 8.64 weeks from February 21 to April 21, 2012.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations 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 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

² 5 U.S.C. § 8107.

tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.³

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.⁴ 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.⁵

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's procedures indicate that *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment using the sixth edition (July/August 2009) is to be applied.⁶

In addressing lower extremity impairments, due to peripheral or spinal nerve root involvement, the sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH) and if electrodiagnostic testing were done, Clinical Studies (GMCS).⁷ The net adjustment formula is (GMFH - CDX) + (GMCS - CDX).⁸

OWCP 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 an OWCP medical adviser providing rationale for the percentage of impairment specified.⁹

³ See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁴ *Pamela J. Darling*, 49 ECAB 286 (1998).

⁵ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

⁶ A.M.A., *Guides* 533.

⁷ *Id.*

⁸ *Id.* at 521.

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

ANALYSIS

OWCP accepted that appellant sustained lumbago and paid benefits. By decision dated June 11, 2013, it granted her a schedule award for three percent impairment of the right leg and paid 8.64 weeks of compensation.

In a March 19, 2012 report, Dr. Patel rated 10 percent whole person impairment of her lumbar spine under Chapter 17 of the A.M.A., *Guides*. FECA, however, specifically excludes the back or spine as an organ and, therefore, it does not come under the provisions for payment of a schedule award.¹⁰ FECA further does not provide for an impairment of the whole person.¹¹ Dr. Patel's rating is of diminished probative value as it does not conform to the protocols for rating impairment under FECA.

The medical adviser reviewed Dr. Patel's report on May 10, 2013. He found that appellant had ratable impairment of the right leg for motor and sensory deficits under the sixth edition of the A.M.A., *Guides*. The medical adviser determined that Dr. Patel failed to utilize *The Guides Newsletter*, July/August 2009, to apply neurologic examination findings to the sensory and motor severity tables for each affected nerve root, adjust for functional history and clinical studies and then combine the motor and sensory impairments. In rating appellant's impairment, the records did not document any left lower extremity symptoms or basis for an impairment of the left leg. Relying on Proposed Table 2 of *The Guides Newsletter*, Spinal Nerve Impairment, he properly rated class 1 impairment for moderate sensory deficit of right S1 nerve root with a default impairment rating of two percent. The medical adviser found under Table 16-6, page 516 of the A.M.A., *Guides*, that appellant had a grade modifier 2 for functional history; and, under Table 16-8, page 519, a grade modifier 2 for clinical studies. He properly noted that grade modifier for physical examination was not utilized for this method. Utilizing the net adjustment formula of (GMFH - CDX) (2-1)+ (GMCS - CDX) (2-1), the medical adviser found the net adjustment of two compared to the diagnostic class resulted in a plus 2 or grade E impairment, which yielded S1 sensory deficit of three percent. The medical adviser noted that the medical records failed to document any motor atrophy or weakness of either lower extremity.

The Board finds that OWCP's medical adviser properly applied the A.M.A., *Guides* to rate appellant's right lower extremity impairment and that his report constitutes the weight of medical opinion. As noted above, for peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures indicate that *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment using the sixth edition (July/August 2009) is to be applied.¹² The medical adviser relied on the July/August 2009 edition of *The Guides Newsletter* and provided a thorough, well-rationalized report in conformance with the applicable tables and protocols of the A.M.A., *Guides* in rendering his impairment rating. The report from Dr. Patel, in contrast, did not meet the standards for rating

¹⁰ *Francesco C. Veneziani*, 48 ECAB 572 (1997). A schedule award is payable for a permanent impairment of the extremities that is due to a work-related back condition; see *Denise D. Cason*, 48 ECAB 530 (1997).

¹¹ *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

¹² See *supra* note 6.

lower extremity impairment for appellant's condition set forth in the sixth edition of the A.M.A., *Guides* and the July/August 2009 edition of *The Guides Newsletter*.

On appeal, appellant contends that the schedule award is not sufficient. However, for the reasons set forth above, there is no evidence which establishes greater than the three percent right lower extremity impairment awarded.

Appellant may request an 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 at any time.

CONCLUSION

The Board finds that appellant has not established that she sustained greater than three percent right lower extremity impairment.

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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