



stopped work on April 4, 2006 and returned on April 6, 2006.<sup>2</sup> OWCP accepted appellant's claim for neck sprain. Appellant continued to receive medical treatment for his accepted condition.

On December 11, 2012 appellant requested a schedule award.

In a February 29, 2012 magnetic resonance imaging (MRI) scan report of the cervical spine, Dr. George G. Kuritza, a Board-certified diagnostic radiologist, reviewed and observed minimal posterior annular disc bulges, measuring approximately two millimeters (mm), noted to slightly indent the thecal sac without significant spinal stenosis nor significant neuroforaminal narrowing. He reported that the remainder of the cervical spine appeared unremarkable and revealed no fractures or significant subluxations.

By letter dated December 12, 2012, OWCP advised appellant that the medical evidence was insufficient to establish his claim for a schedule award. It requested that he submit medical evidence that included an impairment rating in accordance with the sixth edition of the A.M.A., *Guides* and a statement that his condition had reached maximum medical improvement.

Appellant submitted April 2 and November 19, 2012 reports of Dr. Anatoly M. Rozman, Board-certified in physical medicine and rehabilitation. Dr. Rozman reported that appellant suffered from neck pain related to work activities since 2006, but that appellant had reached maximum medical improvement as of July 16, 2012. Upon examination of appellant's neck, he observed pain to palpation over the cervical paraspinal muscles with mild spasm and a couple of trigger points on palpation of the cervical paraspinal muscles. Dr. Rozman found that range of motion was mildly decreased on extension by 20 percent, but was otherwise unremarkable. Spurling maneuver, Hoffman test, Adson maneuver, and impingement sign were negative. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Table 17-2, page 564, Dr. Rozman determined that appellant was class 1 impairment for cumulative history of cervical sprain injury with continued complaints of axial and nonradicular pain. He also referred to Table 17-7 for Physical Examination (GMPE) and Table 17-9 for Clinical Studies (GMCS) adjustments and noted grade modifiers of zero. Dr. Rozman stated that Table 17-6 for Functional History (GMFH) adjustment resulted in grade modifier of 2. Thus, he concluded that appellant had a permanent impairment of two percent whole person impairment.

Appellant was referred to Dr. Allan Brecher, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of his accepted employment conditions, including his accepted neck strain. In a report dated June 30, 2013, Dr. Brecher

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<sup>2</sup> The record reveals that appellant has multiple active cases before OWCP. Appellant has three previously accepted occupational disease claims, combined under master File No. xxxxxx768, for conditions of right lateral epicondylitis, left shoulder sprain, adhesive capsulitis of the right shoulder, and right shoulder bursitis. He received a schedule award for two percent impairment of his right upper extremity under File No. xxxxxx768 on April 4, 2000. OWCP also accepted a June 9, 2004 occupational disease claim for aggravation of right thumb osteoarthritis (File No. xxxxxx180) and a December 30, 2012 occupational disease claim for herniated lumbar disc (File No. xxxxxx165). On August 5, 2012 appellant filed an occupational disease claim (File No. xxxxxx958) alleging that he sustained right knee problems as a result of standing and dispatching heavy equipment containing large volumes of mail as associated with his mail processing clerk duties. He stopped work.

related that based upon his examination findings, as well as electromyogram and MRI scans, appellant had no clear ongoing neck or back condition.

On January 6, 2014 OWCP found a conflict in medical evidence and referred appellant's cases to Dr. Jaroslaw B. Dzwinyk, a Board-certified orthopedic surgeon and impartial medical examiner, for a referee examination.

In his April 28, 2014 report, Dr. Dzwinyk related appellant's history regarding his various claims and accepted injuries and noted that he reviewed extensive documentation regarding his work-related injuries. He stated that appellant continued to complain of persistent symptoms associated with all of his work-related conditions, including pain and stiffness in his right elbow, significant pain in the left shoulder, persistent pain in his neck and lower back, and exacerbation of right knee, lower leg, and ankle pain with most weight bearing activities. Upon examination of the neck, Dr. Dzwinyk observed no spasm or spinous process tenderness. He stated that range of motion of the neck was voluntarily restricted to 50 percent of normal in all directions. Dr. Dzwinyk stated that there were no documented injuries or diagnostic tests to support any type of injury to appellant's neck and lower back. He opined that any ongoing symptoms in the neck or lower back were attributable to preexisting and degenerative conditions, rather than to any occupational injury or work-related condition.

In a March 7, 2014 MRI scan of the cervical spine, Dr. Kuritza stated that when compared to the February 29, 2012 MRI scan appellant continued to demonstrate two-millimeter annular disc bulges at the C3-4, C4-5, C5-6, C6-7, and C7-T1 levels. He noted that the rest of the cervical spine appeared stable and unremarkable with no abnormal contrast-enhancing lesions.

On January 20 and April 8, 2014 appellant provided handwritten statements requesting that his accepted neck sprain condition be changed to reflect the conditions according to the February 29, 2012 and March 7, 2014 MRI scan reports.

In a May 2, 2014 report, Dr. Rozman stated that appellant's condition had not changed since the last examination. He recommended a follow-up examination in two months.

In a decision dated January 27, 2015, OWCP denied appellant's schedule award claim finding that the evidence was insufficient to establish that he sustained a permanent impairment of the neck causally related to his employment injury.

### **LEGAL PRECEDENT**

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his employment.<sup>3</sup>

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<sup>3</sup> *Veronica Williams*, 56 ECAB 367 (2005).

The schedule award provision of FECA<sup>4</sup> 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 of 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 the appropriate standards for evaluating schedule losses.<sup>5</sup>

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, under FECA a schedule award is not payable for injury to the spine.<sup>6</sup> 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.<sup>7</sup>

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. The A.M.A., *Guides* for decade has offered an alternative approach to rating spinal nerve impairments.<sup>8</sup> OWCP has adopted this approach for rating impairment of the upper or lower extremities caused by a spinal injury, as provided in section 3.700 of its procedures, which memorializes proposed tables outlined in a July/August 2009 *The Guides Newsletter*.<sup>9</sup>

Section 8123(a) of FECA provides, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.<sup>10</sup> In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> 20 C.F.R. § 10.404 (1999); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>6</sup> *Pamela J. Darling*, 49 ECAB 286 (1998).

<sup>7</sup> *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>8</sup> *Rozella L. Skinner*, 37 ECAB 398 (1986).

<sup>9</sup> FECA Transmittal No. 10-04 (issued January 9, 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1, n.5 (January 2010); *The Guides Newsletter* is included as Exhibit 4.

<sup>10</sup> 5 U.S.C. § 8123(a).

specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>11</sup>

### ANALYSIS

OWCP accepted that on March 27, 2006 appellant sustained a neck sprain in the performance of duty. On December 11, 2012 appellant requested a schedule award. In a decision dated January 27, 2015, OWCP denied his claim for a schedule award based on the April 28, 2014 report of Dr. Dzwinyk, the impartial medical examiner, who determined that appellant did not have any ongoing neck or lower extremity symptoms causally related to the March 27, 2006 employment injury. The Board finds that appellant has not established a permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*.

On January 6, 2014 OWCP referred appellant to Dr. Dzwinyk as an impartial medical examiner in order to resolve a conflict in medical evidence. In an April 28, 2014 report, Dr. Dzwinyk accurately described appellant's history and noted that he had reviewed extensive documentation regarding appellant's work-related injuries. Upon examination of the neck, he observed no spasm or spinous process tenderness. Dr. Dzwinyk stated that there were no documented objective findings or diagnostic tests to support any type of injury to appellant's neck and lower back. He reported that neurological examination demonstrated normal strength to manual testing throughout all muscle groups of both the upper and lower extremities. Dr. Dzwinyk opined that any ongoing symptoms in the neck or lower back were attributable to preexisting and degenerative conditions, rather than to any occupational injury or work-related condition.

The Board finds that Dr. Dzwinyk provided a well-rationalized report based on a proper factual and medical history and is, therefore, entitled to the special weight due to an impartial medical specialist. Dr. Dzwinyk reviewed the medical record and accurately summarized the relevant medical history. He also conducted a thorough physical examination and provided findings on examination.

The Board notes that absent any evidence of radiculopathy, there is no basis for rating spinal or cervical nerve extremity impairment under FECA.<sup>12</sup> Dr. Dzwinyk reported that appellant's ongoing neck symptoms were not related to his accepted neck sprain. Furthermore, he did not find any impairment to appellant's upper or lower extremities due to radiculopathy, related to his accepted neck condition. Because there is no medical evidence to demonstrate that appellant sustained any impairment to his upper or lower extremities as a result of his accepted cervical sprain, the Board finds that OWCP properly denied appellant's claim for a schedule award.

Following Dr. Dzwinyk's April 28, 2014 impartial medical report, appellant submitted a March 7, 2014 MRI scan report of the cervical spine that showed disc bulges and a May 2, 2014 report by Dr. Rozman. None of these reports provided a medical opinion to establish that

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<sup>11</sup> *Barbara J. Warren*, 51 ECAB 413 (2000).

<sup>12</sup> *Supra* note 8.

appellant sustained a permanent impairment to his upper or lower extremities causally related to the accepted March 7, 2006 neck injury.

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 has not established a permanent impairment causally related to his March 27, 2006 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board