

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**M.O., Appellant**

**and**

**U.S. POSTAL SERVICE, RAVENWOOD  
STATION, Chicago, IL, Employer**

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**Docket No. 15-1830  
Issued: January 6, 2016**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On September 8, 2015 appellant filed a timely appeal from a July 8, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established permanent impairment of the lower extremities.

**FACTUAL HISTORY**

On January 4, 2005 appellant, then a 30-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a pinched nerve or carpal tunnel syndrome causally related to factors of her federal employment. OWCP accepted this claim for bilateral

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

carpal tunnel syndrome, assigned file number xxxxxx196. Appellant underwent a right carpal tunnel release on July 19, 2006.<sup>2</sup>

OWCP also accepted that appellant sustained lumbar sprain and a sprain of the left shoulder and upper arm at the acromioclavicular (AC) joint due to a March 12, 2009 traumatic injury in file number xxxxxx772. On July 1, 2010 OWCP doubled case file number xxxxxx772 into the current file number xxxxxx196.

By decision dated May 29, 2009, OWCP granted appellant a schedule award for six percent permanent impairment of the right upper extremity and four percent permanent impairment of the left upper extremity. The period of the award ran for 31.2 weeks from April 5 through November 9, 2007.

On October 26, 2012 appellant filed a claim for an increased schedule award.

In a report dated October 25, 2013, Dr. Mark Sokolowski, a Board-certified orthopedic surgeon, found that appellant had reached maximum medical improvement on October 4, 2013. He diagnosed bilateral carpal tunnel syndrome, a left AC joint sprain, and lumbar sprain. Dr. Sokolowski discussed appellant's prior schedule award for carpal tunnel syndrome. Citing Table 15-5 on page 403 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2008) (A.M.A., *Guides*), he found that appellant had five percent left upper extremity impairment due to her AC joint injury. Dr. Sokolowski further determined that a magnetic resonance imaging (MRI) scan study of the lumbar spine showed degenerative changes at L5-S1 with retrolisthesis and foraminal stenosis. He opined that, under Table 17-4 on page 572 of the A.M.A., *Guides*, appellant had 14 percent whole person impairment due to degenerative spondylolisthesis with radiculopathy.

On March 24, 2014 an OWCP medical adviser reviewed Dr. Sokolowski's October 25, 2013 report and opined that appellant had one percent left arm impairment due to impingement syndrome according to Table 15-5 on page 402 of the A.M.A., *Guides*. He considered Dr. Sokolowski's finding of 14 percent whole person impairment due to spondylolisthesis but noted the claim was accepted only for lumbar sprain. The medical adviser further indicated that the March 21, 2013 MRI scan study revealed a disc bulge without spinal slippage. He found that appellant had no ratable permanent impairment of the legs.

By decision dated April 17, 2014, OWCP granted appellant a schedule award for an additional one percent permanent impairment of the left upper extremity. It determined that she did not have a ratable impairment of the lower extremities.

In a progress report dated April 28, 2014, Dr. Sokolowski disagreed with OWCP's medical adviser's finding that the diagnostic studies did not show instability of the lumbar spine. On examination he found a positive straight leg raise and strength that was "symmetrically intact

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<sup>2</sup> In a decision dated August 28, 2008, OWCP found that appellant had not established an employment-related recurrence of disability beginning May 24, 2008. On May 26, 2009 it accepted that she sustained a recurrence of disability beginning March 14, 2009.

throughout [appellant's] bilateral lower extremities in all muscle groups with sensation intact to light touch in all dermatomal distributions.”

A May 20, 2014 lumbar MRI scan study showed a small disc protrusion at L4-5 possibly contacting a nerve root, mild bilateral foraminal stenosis, and advanced endplate degeneration at L5-S1.

On June 16, 2014 Dr. Sokolowski reviewed the May 20, 2014 MRI scan study. He advised, “The examiner who reviewed my calculation on permanent impairment did not see instability mentioned on the study report. I reviewed the actual films. There is clear listhesis present.” Dr. Sokolowski found normal sensation and strength of the lower extremities.

On July 30, 2014 appellant requested reconsideration of OWCP's April 17, 2014 denial of her schedule award for the back and lower extremities.

On October 20, 2014 an OWCP medical adviser reviewed the additional medical evidence submitted. He opined that the x-rays did not show spondylolisthesis and that the MRI scan study did not show listhesis. The medical adviser noted that OWCP accepted appellant's claim for lumbar sprain rather than disc degeneration at L5-S1. He concluded that she had no objective evidence of any lower extremity impairment.

By decision dated October 28, 2014, OWCP denied modification of its April 17, 2014 decision.

In a report dated October 29, 2014, Dr. Sokolowski noted that OWCP denied appellant's claim for a schedule award for the lumbar spine because the accepted condition was a lumbar sprain. He related, “She clearly has over time developed a consequential injury of lumbar spondylosis, and lumbar radiculopathy.” Dr. Sokolowski indicated that diagnostic studies supported these diagnoses.

On November 18, 2014 appellant requested reconsideration.

In a report dated January 26, 2015, an OWCP medical adviser opined that appellant had not submitted evidence showing a lower extremity permanent impairment. He found that the sixth edition of the A.M.A., *Guides* at Table 17-4 on page 570 and 571, relevant to determining impairments of the spine and pelvis, provided a rating for herniated discs, spondylolisthesis, fractures, or dislocations or the lumbar spine. The medical adviser opined that May 20, 2014 MRI scan study did not show a disc herniation but instead a protrusion. He further found that appellant did not have spondylolisthesis. The medical adviser determined that she had not met any of the criteria set forth in the A.M.A., *Guides* for a schedule award for the lower extremities.

By decision dated February 5, 2015, OWCP denied modification of its October 28, 2014 decision. It found that the January 26, 2015 report from OWCP's medical adviser constituted the weight of the evidence and established that appellant had no objective evidence of a permanent impairment of the lower extremities.

In a report dated February 9, 2015, Dr. Sokolowski disagreed with OWCP's medical adviser's finding that a disc herniation differed from a disc protrusion. He asserted that appellant

had a disc herniation and thus an impairment under the sixth edition of the A.M.A., *Guides*. On examination, Dr. Sokolowski found a positive straight leg raise and back pain with radiation to the buttocks with extension. He related, “Strength is intact throughout [appellant’s] bilateral lower extremities in all muscle groups with sensation intact to light touch in all dermatomal distributions.”

On February 11, 2015 appellant requested reconsideration.

In a report dated June 26, 2015, an OWCP medical adviser applied *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*) to Dr. Sokolowski’s clinical findings. He noted that Dr. Sokolowski found intact sensation with no loss of strength of the bilateral lower extremities in his February 9, 2015 report. The medical adviser used Proposed Table 2 of *The Guides Newsletter* to find a class 0 diagnosis for sensory and motor loss, which yielded zero percent impairment rating. He noted that Dr. Sokolowski had based his impairment on the lumbar spine rather than the lower extremities and did not use *The Guides Newsletter* as appropriate.

By decision dated July 8, 2015, OWCP denied modification of the February 5, 2015 decision. It determined that the June 26, 2015 report from its medical adviser represented the weight of the evidence and established that appellant did not have a work-related lower extremity impairment.

On appeal appellant disagrees with the finding of OWCP’s medical adviser. She argues that Dr. Sokolowski diagnosed a disc herniation and noted that appellant experienced numbness and tingling in her feet and toes bilaterally with radiating pain down her right side into her foot.

### **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>3</sup> and its implementing federal regulations,<sup>4</sup> 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. 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup>

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.* at § 10.404(a).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

Neither FECA nor its regulations provide for a schedule award for impairment to the back or to the body as a whole.<sup>7</sup> Furthermore, the back is specifically excluded from the definition of organ under FECA.<sup>8</sup> The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter* offers an approach to rating spinal nerve impairments consistent with sixth edition methodology. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP procedures indicate that *The Guides Newsletter* is to be applied.<sup>9</sup>

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 or her employment.<sup>10</sup>

### ANALYSIS

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome under file number xxxxxx196 and a sprain of the left AC joint and lumbar sprain under file number xxxxxx772. It doubled file number xxxxxx772 into master file number xxxxxx196.

On May 29, 2009 OWCP granted appellant a schedule award for six percent permanent impairment of the right arm and four percent permanent impairment of the left arm. On April 17, 2014 it granted a schedule award for an additional one percent permanent impairment of the left arm, but found that she had not established impairment in the lower extremity. Appellant requested reconsideration of OWCP's finding and in decisions dated 2014 and 2015, OWCP denied modification of its prior determination that the medical evidence was insufficient to establish lower extremity impairment.

The Board finds that appellant has not established a ratable permanent impairment of either leg under the A.M.A., *Guides*.

In a report dated October 25, 2013, Dr. Sokolowski diagnosed degenerative changes of the lumbar spine at L5-S1, foraminal stenosis, and retrolisthesis. Citing Table 17-4 on page 572 of the A.M.A., *Guides*, he opined that appellant had 14 percent whole person impairment due to degenerative spondylolisthesis with radiculopathy. On March 24, 2014 an OWCP medical adviser opined that diagnostic studies did not show a disc herniation or spinal slippage and thus there was no objective basis for using Table 17-4. The use of Table 17-4, however, is applicable in determining impairments of the spine and pelvis and thus it not appropriate for use under

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<sup>7</sup> See *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

<sup>8</sup> See 5 U.S.C. § 8101(19); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

<sup>10</sup> See *Veronica Williams*, 56 ECAB 367 (2005).

FECA, which specifically excludes the back as an organ.<sup>11</sup> Further, FECA does not provide for impairment of the whole person.<sup>12</sup>

On April 28, 2014 Dr. Sokolowski disagreed with the finding of OWCP's medical adviser that appellant did not have lumbar spine instability. He found intact strength and sensation of the lower extremities. On June 16, 2014 Dr. Sokolowski again noted that he did not concur with OWCP's medical adviser's finding that there was no instability as a May 20, 2014 MRI scan study showed listhesis. He did not, however, provide an impairment rating of the lower extremities and thus his reports are insufficient to support a schedule award for the claimed conditions. Additionally, OWCP accepted that appellant sustained a lumbar sprain and not lumbar instability or listhesis.

In a report dated October 29, 2014, Dr. Sokolowski disagreed with OWCP's denial of appellant's schedule award claim for the spine because it had only accepted lumbar sprain. He diagnosed lumbar spondylosis and lumbar radiculopathy as consequential conditions due to her work injury. Where a claimant claims that a condition not accepted or approved by OWCP was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.<sup>13</sup> Dr. Sokolowski did not provide any rationale for his opinion that appellant's work injury caused lumbar spondylosis and radiculopathy. Medical conclusions unsupported by rationale are of little probative value.<sup>14</sup> On January 26, 2015 an OWCP medical adviser reviewed Dr. Sokolowski's report and found that appellant did not meet the criteria set forth at Table 17-4 for rating an impairment of the spine or pelvis as she had a disc protrusion rather than a herniation. As previously noted, however, FECA does not provide a schedule award for the back.<sup>15</sup>

On February 9, 2015 Dr. Sokolowski opined that appellant had a herniated disc and thus an impairment under the A.M.A., *Guides*. On examination he found intact strength and sensation of the lower extremities. Dr. Sokolowski did not address whether appellant had lower extremity impairment but instead found an impairment due to a herniated disc. As discussed, no schedule award is payable for a member, function, or organ of the body not specified in FECA or in the implementing regulations.<sup>16</sup> Because neither FECA nor OWCP regulations provide for the payment of a schedule award of the permanent loss of use of the back, a claimant is not entitled to such an award.<sup>17</sup>

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<sup>11</sup> *Supra* note 8.

<sup>12</sup> *Supra* note 7.

<sup>13</sup> *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>14</sup> *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

<sup>15</sup> *See supra* note 8.

<sup>16</sup> *See J.D.*, 58 ECAB 254 (2007).

<sup>17</sup> *See R.S.*, 58 ECAB 362 (2007).

On June 26, 2015 an OWCP medical adviser discussed Dr. Sokolowski's finding of normal strength and sensation of the bilateral lower extremities. Citing Proposed Table 2 of *The Guides Newsletter*, he found a class 0 diagnosis for sensory and motor loss, which yielded zero percent impairment rating. The medical adviser disagreed with Dr. Sokolowski's impairment determination as he had rated appellant's lumbar spine and did not use *The Guides Newsletter*. Under FECA, although there is no schedule award for the back, an impairment from a spinal nerve affecting the lower extremities can be determined using *The Guides Newsletter*. The Board finds that he properly applied the relevant standards in *The Guides Newsletter* to Dr. Sokolowski's clinical findings. OWCP's medical adviser's opinion thus constitutes the weight of the evidence and establishes that appellant does not have a ratable employment-related impairment of either lower extremity.

On appeal appellant notes that Dr. Sokolowski diagnosed a disc herniation. She relates that she experiences numbness and tingling throughout her lower extremities and pain in her right lower extremity. The issue, however, is whether the medical evidence establishes that appellant has a ratable impairment of the lower extremities under the A.M.A., *Guides*. Appellant has the burden to submit a medical opinion supporting permanent impairment.<sup>18</sup> There is no probative medical evidence of record conforming to the A.M.A., *Guides* establishing a ratable impairment of the lower extremities causally related to her accepted lumbar sprain.

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 met her burden of proof to establish that she is entitled to a schedule award for a permanent impairment of the lower extremities.

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<sup>18</sup> See *K.S.*, Docket No. 15-0741 (issued August 10, 2015); *D.H.*, 58 ECAB 358 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 8, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2016  
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