



accepted appellant's claim for a sprain of back, lumbar region. It paid him wage-loss compensation on the supplemental rolls from August 19 through October 13, 2015.

In a September 14, 2015 medical report, Dr. Edward Kahn, a Board-certified orthopedic surgeon, noted that appellant was essentially back to normal with regard to his idiopathic foot drop. He prescribed a new medication and advised that appellant could return to working without restrictions. In a subsequent October 13, 2015 medical report, appellant informed Dr. Kahn that, aside from one episode of a flare up of back pain, he was doing fine and did not experience a foot drop. Dr. Kahn advised that he had reached maximum medical improvement (MMI) and released him from his care. Using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>2</sup> (A.M.A., *Guides*), he found that appellant had no impairment related to his injury.

On August 12, 2019 appellant filed a claim for a schedule award (Form CA-7).

In an August 23, 2019 development letter, OWCP advised appellant of the deficiencies of his claim and requested medical evidence containing a detailed description of his permanent impairment specific to the accepted work-related condition, a date of MMI, a final rating of permanent impairment, and a discussion of the rationale for the calculation of the impairment under the sixth edition of the A.M.A., *Guides*. It afforded him 30 days to submit the necessary evidence.

In an August 5, 2019 medical report, Dr. Dewayne P. Darby, a Board-certified family medicine specialist, followed up with appellant over complaints of left leg pain. He noted multiple conditions, including degenerative joint disease involving multiple joints, left-sided sciatica and low back pain. On evaluation of a diagnostic report of even date in which Dr. Samuel Bilyeu, a Board-certified radiologist, performed an x-ray of appellant's lumbar spine, Dr. Darby diagnosed avascular necrosis of the head of the femur -- right and referred appellant for orthopedic surgery.

In an August 8, 2019 diagnostic report, Dr. Bilyeu performed a computerized tomography (CT) scan of appellant's right hip, finding mild right hip joint osteoarthritis.

In a September 6, 2019 statement, appellant explained that since his employment injury the pain in his lower left lumbar had never resolved. He noted that he also experienced pain in his left leg down to his toes which prevented him from standing longer than an hour without having to sit down. Appellant noted that he spoke with a doctor who believed that the steroids he used to treat his condition gave him pancreatitis and also may have caused his right hip problem.

By decision dated February 18, 2020, OWCP denied appellant's schedule award claim, finding that he had not submitted medical evidence to establish permanent impairment causally related to an accepted employment condition.

On May 26, 2020 appellant requested reconsideration of OWCP's February 18, 2020 decision.

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

Appellant attached a March 17, 2020 medical report wherein Dr. Michael Bratton, a Board-certified orthopedic surgeon, noted that he followed up with appellant concerning his left leg pain and a recent electromyogram study. On evaluation, Dr. Bratton diagnosed a foot drop, left foot.

Appellant also submitted a May 20, 2020 schedule award claim (Form CA-7).

By decision dated June 25, 2020, OWCP denied modification of its February 18, 2020 decision.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>3</sup> and its implementing 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. FECA, however, does not specify the manner in which the percentage of loss of a member 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 and the Board has concurred in such adoption.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.<sup>6</sup>

It is the claimant's burden of proof to establish permanent impairment of the scheduled member or function of the body as a result of an employment injury.<sup>7</sup> OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.<sup>8</sup> Its procedures further provide that, if a claimant has not submitted a permanent impairment evaluation, it should request a detailed report that includes a discussion of how the impairment rating was calculated.<sup>9</sup> If the claimant does not provide an impairment evaluation and there is no

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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); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>7</sup> *T.K.*, Docket No. 19-1222 (issued December 2, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>8</sup> *Supra* note 6 at Chapter 2.808.5 (March 2017).

<sup>9</sup> *Id.* at Chapter 2.808.6(a) (March 2017).

indication of permanent impairment in the medical evidence of file, the claims examiner may proceed with a formal denial of the award.<sup>10</sup>

Neither FECA, nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.<sup>11</sup> However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.<sup>12</sup> The sixth edition of the A.M.A., *Guides* provides a specific methodology for rating spinal nerve extremity impairment.<sup>13</sup> It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine. The 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 into OWCP's procedures.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish permanent impairment of a scheduled member of function or the body, warranting a schedule award.

In his October 13, 2015 medical report, Dr. Kahn noted that, aside from a one episode flare up of back pain, appellant was doing fine and did not experience his usual symptoms. Utilizing the sixth edition of the A.M.A., *Guides*, he determined that appellant had achieved MMI and found that he had no permanent impairment related to his accepted condition.

The Board finds that the medical evidence of record does not describe an impairment in sufficient detail so that it can be visualized on review, and does not compute the percentage of impairment in accordance with the most recent edition of the A.M.A., *Guides*.<sup>15</sup> On August 23, 2019 OWCP requested that appellant submit a medical opinion addressing whether he had reached MMI and the extent of permanent impairment; however, appellant did not provide such a rating. Appellant has submitted no other medical evidence in conformance with either the A.M.A., *Guides* or *The Guides Newsletter*, establishing permanent impairment of a scheduled member or function of the body. The Board therefore finds that he has not met his burden of proof to establish his schedule award claim.<sup>16</sup>

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<sup>10</sup> *Id.* at Chapter 2.808.6(c).

<sup>11</sup> 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see B.C.*, Docket No. 17-1617 (issued January 8, 2018); *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

<sup>12</sup> *Supra* note 6 at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a(3) (March 2017).

<sup>13</sup> The methodology and applicable tables were initially published in *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (The Guides Newsletter)* (July/August 2009).

<sup>14</sup> *See supra* note 6 at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4.

<sup>15</sup> *C.T.*, Docket No. 18-0257 (issued May 21, 2019).

<sup>16</sup> *D.F.*, Docket No. 18-1337 (issued February 11, 2019).

Appellant may request a schedule award or increased schedule award at any time 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 his burden of proof to establish permanent impairment of a scheduled member of function or the body, warranting a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 25, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board