

establishment issued vehicle while in the performance of duty. He did not stop work. On December 12, 2013 OWCP accepted his claim for neck sprain.

On December 2, 2013 appellant underwent a right shoulder magnetic resonance imaging (MRI) scan, which demonstrated a superior labrum anterior and posterior (SLAP) tear, with mild acromioclavicular (AC) joint osteoarthritis, and mild supraspinatus tendinosis.

In November 13 and December 23, 2013 notes, Dr. Christopher Kyriakdes, an osteopath and Board-certified physiatrist, diagnosed lumbosacral derangement, neck sprain, internal derangement of the right knee, and derangement of the right shoulder joint.

On January 6, 2014 appellant returned to full-time, light-duty work and then transitioned to full duty on January 31, 2014.

On January 14, 2014 Dr. Jason R. Baynes, a Board-certified orthopedic surgeon, noted appellant's history of MVA and cervical, thoracic, lumbar, shoulder, and right knee injuries. He diagnosed traumatic injury to right knee and right shoulder, including SLAP tear. Dr. Baynes recommended that appellant return to full duty.

On May 30, 2018 appellant filed a schedule award claim (Form CA-7). In support of this claim, he provided a December 18, 2017 report from Dr. David Weiss, an osteopath. Dr. Weiss recounted appellant's history of injury, beginning on March 18, 2010, when he injured his left knee. He noted appellant's November 2013 MVA and right shoulder injury. On physical examination Dr. Weiss found that appellant had normal gait, but a peripatellar effusion of the left knee and three measurements of flexion and extension from 0 to 140 degrees. He observed 4+/5 strength of the left quadriceps and indicated that appellant's right shoulder range of motion revealed forward flexion of 170 degrees, abduction of 170 degrees, cross-over adduction of 65 degrees and 90 degrees of external rotation. Dr. Weiss found normal muscle strength in the upper extremities. He diagnosed chronic post-traumatic patellofemoral pain syndrome of the left knee, partial thickness tear of the patellar tendon of the left knee with residual chronic patellar tendinitis, SLAP lesion of the right shoulder, post-traumatic impingement syndrome of the right shoulder, and aggravation of preexisting AC joint arthropathy. Dr. Weiss applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*)² and found that, utilizing the range of motion (ROM) method, appellant had three percent permanent impairment of the right shoulder due to loss of flexion or three percent permanent impairment of the right shoulder utilizing the diagnosis-based impairment (DBI) method for right shoulder labral tear in accordance with Table 15-5, page 404 of the A.M.A., *Guides*. With regard to appellant's left lower extremity, he found one percent permanent impairment utilizing the DBI method due to left patellar tendon tear in accordance with Table 16-4, page 512 of the A.M.A., *Guides*. Applying a grade modifier for physical examination (GMPE) of 2 in accordance with Table 16-7, page 517 of the A.M.A., *Guides*, and grade modifier for functional history (GMFH) of 1 in accordance with Table 16-6, page 516 of the A.M.A., *Guides* to the net adjustment formula, resulted in a net adjustment of one or two percent permanent impairment of the left lower

² A.M.A., *Guides*, 6th ed. (2009).

extremity. Dr. Weiss found that appellant had reached maximum medical improvement (MMI) on December 18, 2017.

In a statement of accepted facts (SOAF) dated October 2, 2018, OWCP noted that the November 7, 2013 employment injury was accepted for neck sprain only. It further noted that, under OWCP File No. xxxxxx233, appellant's claim was accepted for right knee abrasion, while the conditions of partial thickness tear of the patellar tendon of the left knee, glenoid labral tear of the right shoulder, post-traumatic impingement syndrome of the right shoulder, aggravation of preexisting quiescent AC joint arthropathy, chondromalacia of the patellofemoral area, left knee patellar tendon tear, post-traumatic left knee bursitis, and tendinitis were denied.

On January 23, 2019 OWCP referred appellant and the case record, along with a SOAF, to Dr. Morley Slutsky, Board-certified in occupational medicine, serving as an OWCP district medical adviser (DMA), for review for schedule award purposes. In his February 7, 2019 report, Dr. Slutsky noted that appellant's claim had been accepted for neck sprain, and he reviewed Dr. Weiss' December 18, 2017 report. He noted that appellant did not have upper extremity sensory or motor deficits related to his accepted neck sprain. Dr. Slutsky found that appellant had three percent permanent impairment of his right shoulder based on either loss of ROM or labral tear.

On February 19, 2019 OWCP requested a supplemental report from the DMA, noting that the condition of labral tear right shoulder had not been accepted as employment related. It provided an updated SOAF.

In a February 28, 2019 report, Dr. Slutsky found that appellant had no upper extremity sensory or motor deficits related to his neck sprain and that there was no basis for an upper extremity impairment rating using *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009) (The Guides Newsletter)*.

OWCP found that there was a conflict of medical opinion evidence between Drs. Slutsky and Weiss regarding whether appellant sustained permanent upper extremity impairments due to his accepted November 7, 2013 injury. In a letter dated March 12, 2019, OWCP referred appellant, a SOAF, and a series of questions for an impartial medical examination with Dr. Dean Carlson, a Board-certified orthopedic surgeon.

In his April 11, 2019 report, Dr. Carlson, reviewed the medical evidence and performed a physical examination. He reviewed appellant's December 2, 2013 right shoulder MRI scan and diagnosed SLAP tear right shoulder due to job injury of November 7, 2013 and chronic patellar tendinitis left knee due to job injury of March 18, 2010. Dr. Carlson provided impairment ratings in accordance with the A.M.A., *Guides* based on these conditions.

On May 1, 2019 OWCP requested a supplemental report from Dr. Carlson, noting that he had submitted a second opinion report, and asking that he explain how appellant's permanent impairment was causally related to his accepted condition of neck sprain.

In a May 3, 2019 report, Dr. Carlson clarified that appellant's right shoulder impairment was a right upper extremity impairment and that his left knee patellar tendinitis was a left lower extremity impairment.

On May 17, 2019 OWCP requested further clarification from Dr. Carlson emphasizing that the only accepted condition was neck sprain and that any upper extremity conditions should be rated based solely on impairments from this condition. On May 29, 2019 it further clarified that the conditions of partial left patellar tendon tear, bursitis of the left knee, and chondromalacia patella of the left knee, and left knee tendinitis had been accepted under OWCP File No. xxxxxx233.

In a May 30 2019 report, Dr. Carlson found that appellant had two percent permanent impairment of his left lower extremity based on chronic patellar tendinitis.

On June 5, 2019 OWCP again asked that Dr. Carlson address any permanent impairment of the upper extremities resulted from appellant's accepted condition of neck sprain. It again noted that SLAP tear of the right shoulder was not an accepted employment-related condition.

In a report dated May 20, 2019, Dr. Carlson diagnosed chronic cervical strain, resolved, and reported that appellant had no radicular signs or symptoms. He concluded that appellant had no impairment rating as his right shoulder pain was not due to a radicular cause.

By decision dated June 7, 2019, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish that he sustained permanent impairment to a scheduled member or body part due to his November 7, 2013 employment injury.

On July 26, 2019 appellant requested reconsideration. He argued that OWCP should expand its acceptance of his claim to include SLAP tear of his right shoulder, as well as cervical derangement, lumbar derangement, and internal derangement of the right knee.

In an August 8, 2019 development letter, OWCP requested that appellant provide additional medical reports from Dr. Weiss addressing his claim for permanent impairment. It afford him 30 days for a response.

On August 23, 2018 appellant clarified his request for reconsideration was based on his belief that if OWCP expanded his claim to include additional diagnosed conditions, then he would be entitled to a schedule award.

By decision dated October 23, 2019, OWCP denied modification of the schedule award decision. It did not address appellant's request for expansion of his claim to include additional upper and lower extremity conditions.

LEGAL PRECEDENT

The schedule award provisions of FECA,³ and its implementing federal regulation,⁴ 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 loss of a member shall be determined.

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.404.

The method used in making such a determination is a matter which rests in the 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.⁵ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.⁶

It is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of an employment injury.⁷ OWCP's 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, 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*.⁸

Neither FECA nor its regulations provide for a schedule award for impairment to the back or to the body as a whole.⁹ Furthermore, the back is specifically excluded from the definition of organ under FECA.¹⁰ 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's procedures indicate that *The Guides Newsletter* is to be applied.¹¹ The Board has recognized the adoption of this methodology for rating extremity impairment, including the use of *The Guides Newsletter*, as proper in order to provide a uniform standard applicable to each claimant for a schedule award for extremity impairment originating in the spine.¹²

⁵ For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁶ *K.J.*, Docket No. 19-1492 (issued February 26, 2020); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁷ *M.G.*, Docket No. 19-1627 (issued April 17, 2020); *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁸ *Supra* note 5, *B.J.*, Docket No. 19-0960 (issued October 7, 2019).

⁹ *K.Y.*, Docket No. 18-0730 (issued August 21, 2019); *L.L.*, Docket No. 19-0214 (issued May 23, 2019); *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

¹⁰ 5 U.S.C. § 8101(19); *G.S.*, Docket No. 18-0827 (issued May 1, 2019); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

¹¹ Federal (FECA) Procedure Manual, *supra* note 5 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

¹² *E.D.*, Docket No. 13-2024 (issued April 24, 2014); *D.S.*, Docket No. 13-2011 (issued February 18, 2014).

The claimant has the burden of proof to establish that the condition for which a schedule award is sought is causally related to his or her federal employment.¹³

ANALYSIS

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

There is no medical evidence supporting that appellant has any permanent impairment as a result of his accepted condition of neck sprain. Neither Dr. Weiss, Dr. Slutsky, nor Dr. Carlson opined that he had permanent impairment of his upper extremities as a result of his accepted employment injury. Further, there are no medical reports, which provide an assessment of his permanent impairment, pursuant to *The Guides Newsletter*, establishing ratable permanent impairment of a scheduled member or function of the body.¹⁴

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.¹⁵

CONCLUSION

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

¹³ *G.S.*, *supra* note 10; *Veronica Williams*, 56 ECAB 367 (2005).

¹⁴ *V.J.*, Docket No. 19-1789 (issued April 8, 2020); *C.D.*, Docket No. 16-1489 (issued April 12, 2017).

¹⁵ The Board notes that OWCP has not issued a final decision addressing appellant's request to expand the accepted conditions resulting from his November 7, 2013 employment injury. As OWCP has not issued a final decision, the Board may not address this issue on appeal. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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