

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

T.T., Appellant	)	
	)	
and	)	<b>Docket No. 24-0079</b>
	)	<b>Issued: April 1, 2024</b>
U.S. POSTAL SERVICE, INDIANAPOLIS	)	
PROCESSING & DISTRIBUTION CENTER,	)	
Indianapolis, IN, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On November 7, 2023 appellant filed a timely appeal from a September 5, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> The Board notes that appellant also appealed from a September 22, 2022 decision of OWCP. However, the Board set this decision aside on June 28, 2023, under Docket No. 23-0116, and remanded the case for further development. *See* Docket No. 23-0116 (issued June 28, 2023). The Board's June 28, 2023 decision became final on July 28, 2023, within 30 days of its issuance, and is not subject to further review. *See* 20 C.F.R. § 501.6(d), which provides in pertinent part: "The Board's decisions and orders are "final upon the expiration of 30 days from the date of their issuance."

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decisions and order are incorporated herein by reference. The relevant facts are as follows.

On January 8, 2019 appellant, then a 50-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 14, 2018 she sprained her thoracic and lumbar spine when lifting trays out of an all-purpose container while in the performance of duty. She stopped work and returned to modified duty on December 21, 2018. OWCP accepted appellant's claim for lumbar sprain, sprain of sacroiliac joint, lumbar intervertebral disc disorder with myelopathy, and lumbosacral intervertebral disc disorder with radiculopathy. On March 11, 2019 appellant stopped work again. OWCP paid her wage-loss compensation on the supplemental rolls, effective March 11, 2019.<sup>4</sup>

On March 17, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated March 17, 2020, OWCP requested that appellant provide a medical report, which included an impairment rating utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>5</sup> and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*). It afforded her 30 days to submit the requested information. OWCP received a series of medical reports and copies of previous OWCP decisions.

By decision dated April 29, 2020, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish maximum medical improvement (MMI) or permanent impairment of a scheduled member or function of the body, warranting a schedule award.

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<sup>3</sup> Docket No. 20-0687 (issued December 11, 2020); Docket No. 23-0116 (issued June 28, 2023).

<sup>4</sup> By decision dated March 6, 2020, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective March 6, 2020. Appellant filed an appeal to the Board, to which the Clerk of the Appellate Boards assigned Docket No. 20-0864. By a December 17, 2020 order dismissing appeal, the Board found that the March 6, 2020 OWCP decision was null and void, as the Board had assumed jurisdiction under Docket No. 20-0687 over a related issue of expansion and dismissed her appeal assigned Docket No. 20-0864. *Order Dismissing Appeal*, Docket No. 20-0864 (issued December 17, 2020).

<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

On May 13, 2020 appellant requested reconsideration and submitted additional medical evidence.

In a spine and pelvis impairment evaluation record dated May 27, 2020, Mr. Collin Gallagher, a certified athletic trainer, utilized the diagnosis-based impairment (DBI) rating method and noted a class of diagnosis (CDX) of lumbar sprain. He indicated a grade modifier for physical examination (GMPE) of 1 and reported that grade modifiers for functional history (GMFH) and clinical studies (GMCS) were not applicable. Mr. Gallagher determined that appellant had two percent permanent impairment of the whole person.

By decision dated August 5, 2020, OWCP denied modification of its prior decision.

On September 22, 2020 appellant requested reconsideration.

Appellant submitted a September 4, 2020 document indicating that she was examined on that date by Dr. Sunita Premkumar, Board-certified in family practice. In a report dated September 16, 2020, Dr. Phillip Kingma, a Board-certified pain management specialist, evaluated appellant for a low back strain and noted the December 14, 2018 employment injury. He reported that appellant had reached maximum medical improvement (MMI) from her injury on September 16, 2020, the date of his examination. Dr. Kingma explained that appellant's initial low back injury had resolved and that her residual symptoms were more likely due to her underlying degenerative changes.

OWCP referred the claim to Dr. Arthur Harris, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), to provide an impairment rating in conformity with the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*. In an October 31, 2020 report, Dr. Harris reviewed appellant's history of injury and noted her accepted conditions of lumbar sprain, lumbar disc disorder, and lumbar radiculopathy. He explained that as she did not have any neurologic deficit causing sensory or motor loss, she had a Class 0 placement under Table 2 of *The Guides Newsletter*, resulting in zero percent lower extremity permanent impairment. Dr. Harris reported a date of MMI of September 8, 2020, the date of an examination by Dr. Premkumar.

By decision dated November 20, 2020, OWCP denied modification of its prior decision based on the October 28, 2020 report of Dr. Katz.

On April 30, 2021 appellant requested reconsideration and submitted an April 22, 2021 report by Dr. Ted Matthews, a chiropractor. By decision dated May 17, 2021, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

On July 16, 2021 appellant requested reconsideration.

In a July 1, 2021 electromyography and nerve conduction velocity (EMG/NCV) study, Dr. Kristi Kock George, a Board-certified neurologist, noted an abnormal EMG/NCV study of the lower extremities. She indicated that findings were consistent with a moderate, chronic right L4 and L5 radiculopathy.

On July 29, 2021 OWCP requested that Dr. Harris review the additional medical reports and provide a supplemental report regarding whether appellant sustained a ratable impairment in the lower extremities pursuant to the A.M.A., *Guides* and *The Guides Newsletter*. In an August 2, 2021 supplemental report, Dr. Harris indicated that the July 1, 2020 electrodiagnostic study was consistent with right L4-5 radiculopathy and that a review of the medical records showed no significant change in appellant's condition since September 8, 2020, the date of MMI. Utilizing the DBI-rating method, he referenced Table 2 of *The Guides Newsletter* and determined that she had no ratable impairment of the bilateral lower extremities because she did not have any neurologic deficits in the lower extremities consistent with lumbar radiculopathy. Dr. Harris explained that the range of motion (ROM) rating methodology was not applicable as it was not permitted as an alternative rating method for appellant's condition under the A.M.A., *Guides*.

By decision dated August 23, 2021, OWCP denied modification of its prior decision based on Dr. Harris' August 1, 2021 report.

On June 2, 2022 appellant requested reconsideration and submitted progress notes and physical therapy reports dated August 6, 2021 through May 25, 2022.

By decision dated July 8, 2022, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

On August 1, 2022 appellant requested reconsideration.

Appellant submitted a March 17, 2022 lumbar spine magnetic resonance imaging (MRI) scan, which revealed multilevel canal stenosis and relatively mild degenerative changes of the lumbar spine.

In a discharge summary report dated June 16, 2022, Dr. Philip C. Sailer, a Board-certified orthopedic surgeon, noted diagnoses of neurogenic claudication, lumbar pain, lumbar radiculopathy, and lumbar stenosis. He provided lumbar ROM examination findings and reported minimal hypomobility throughout the lumbar spine.

In a supplemental August 10, 2022 report, Dr. Harris indicated that he reviewed the additional medical records and noted that they did not provide any objective evidence that appellant had any impairment in either lower extremity. He explained that she did not have any neurologic deficit causing sensory or motor loss, therefore, she had a Class 0 placement under Table 2 of *The Guides Newsletter*, resulting in zero percent bilateral lower extremity permanent impairment.

By decision dated September 22, 2022, OWCP denied modification of its prior decision.

By separate decision dated September 22, 2022, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body due to her accepted December 14, 2018 employment injury.

Appellant appealed to the Board and, by decision dated June 28, 2023, the Board set aside the September 22, 2022 OWCP decision and remanded the case for OWCP to obtain a

supplemental report from Dr. Harris regarding whether appellant had an impairment rating in conformity with the A.M.A., *Guides* and *The Guides Newsletter* causally related to her accepted December 14, 2018 employment injury. It found that Dr. Harris did not adequately explain why he assigned a Class 0 for no neurologic deficits when the July 1, 2021 EMG/NCV study showed findings consistent with moderate right L4 and L5 radiculopathy.<sup>6</sup>

OWCP subsequently referred appellant again to Dr. Harris and requested a supplemental report to explain why he previously assigned a Class 0 placement under Table 2 of *The Guides Newsletter* for no neurologic deficits even though the July 1, 2021 EMG/NCV study report showed findings consistent with moderate right L4 and L5 radiculopathy. In an August 12, 2023 supplemental report, Dr. Harris noted his review of the record, including the statement of accepted facts (SOAF), and appellant's accepted conditions of lumbar sprain, lumbar disc disorder, and lumbar radiculopathy. He also indicated that a June 16, 2022 discharge summary report noted limited motion of the lumbar spine, without neurologic deficit in either lower extremity.

Utilizing the DBI rating method, Dr. Harris referenced Table 2 of *The Guides Newsletter* and determined that she had no ratable impairment of the bilateral lower extremities because she did not have any neurologic deficits in the lower extremities consistent with lumbar radiculopathy. He further explained that Table 15-14 (Sensory and Motor Severity), page 425, of the sixth edition of the A.M.A., *Guides* indicated that normal sensibility and sensation and normal motor strength resulted in a severity of zero deficit. Dr. Harris reported that Table 2 of *The Guides Newsletter* states that for a Class 0 impairment, the claimant would have zero percent lower extremity permanent impairment. He noted that appellant did not have either a sensory or motor deficit consistent with lumbar radiculopathy, which correlated to a Class 0 impairment and zero percent bilateral lower extremity permanent impairment. Dr. Harris reported that while the claimant had positive electrodiagnostic studies consistent with lumbar radiculopathy, impairments for lumbar radiculopathy were based on the presence of sensory and motor deficits consistent with lumbar radiculopathy and not on positive electrodiagnostic studies, absent any sensory or motor deficits. He noted that the abnormal electrodiagnostic study would result in a grade modifier for clinical studies (GMCS) of 2, but advised that grade modifiers were not applicable when the claimant has a Class 0 impairment. Dr. Harris indicated that the ROM rating methodology was not applicable for appellant's diagnosis.

By decision dated September 5, 2023, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>7</sup> and its implementing regulations<sup>8</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

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<sup>6</sup> Docket No. 23-0116 (issued June 28, 2023).

<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> 20 C.F.R. § 10.404.

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>9</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>10</sup>

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's *International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement*.<sup>11</sup> Under the sixth edition, for lower extremity impairments, the evaluator identifies the impairment of the CDX, which is then adjusted by a grade modifier for functional history (GMFH), grade modifier for physical examination (GMPE), and GMCS.<sup>12</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>13</sup> The standards for evaluation of permanent impairment of an extremity under the A.M.A., *Guides* are based on all factors that prevent a limb from functioning normally, such as pain, sensory deficit, and loss of strength.<sup>14</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>15</sup> Furthermore, the back is specifically excluded from the definition of an organ under FECA.<sup>16</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 July/August 2009 edition of *The Guides Newsletter* is to be applied.<sup>17</sup>

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<sup>9</sup> *Id.* at § 10.404(a); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>11</sup> A.M.A., *Guides*, page 3, section 1.3.

<sup>12</sup> *Id.* at 493-556.

<sup>13</sup> *Id.* at 521.

<sup>14</sup> *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *E.B.*, Docket No. 10-0670 (issued October 5, 2010); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>15</sup> 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

<sup>16</sup> *See id.* at § 8101(19); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

<sup>17</sup> *Supra* note 10 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

## ANALYSIS

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

In an August 12, 2023 supplemental report, Dr. Harris, the DMA, reviewed appellant's history of injury and noted her accepted conditions of lumbar sprain, lumbar disc disorder, and lumbar radiculopathy. He indicated that a June 16, 2022 discharge summary report noted limited motion of the lumbar spine, without neurologic deficit in either lower extremity. Utilizing the DBI rating method, Dr. Harris referenced Table 2 of *The Guides Newsletter* and determined that she had no ratable impairment of the bilateral lower extremities based on no neurologic deficits in the lower extremities consistent with lumbar radiculopathy. In response to OWCP's request for clarification, he explained that appellant did not have sensory or motor deficits consistent with lumbar radiculopathy, which correlated to a Class 0 impairment and zero percent bilateral lower extremity permanent impairment. Dr. Harris reported that while the claimant had positive electrodiagnostic studies consistent with lumbar radiculopathy, impairments for lumbar radiculopathy were based on the presence of sensory and motor deficits consistent with lumbar radiculopathy and not on positive electrodiagnostic studies, absent any sensory or motor deficits.

The Board finds that Dr. Harris correctly applied the appropriate tables and grading schedules of the A.M.A., *Guides* and *The Guides Newsletter* to find that appellant had zero percent permanent impairment of the lower extremities due to her accepted lumbar injuries.<sup>18</sup> Dr. Harris accurately summarized the relevant medical evidence, including findings on examination, and properly referred to Table 2 of *The Guides Newsletter* in determining whether appellant had ratable permanent impairment of the lower extremities based on her accepted lumbar injuries. Dr. Harris properly determined that appellant had no ratable impairment due to no evidence of neurologic deficits. As his report is detailed, well-rationalized, and based on a proper factual background, his opinion represents the weight of the medical evidence.<sup>19</sup>

As the medical evidence of record is insufficient to establish a ratable permanent impairment of the lower extremities, warranting a schedule award, the Board finds that appellant has not met her burden of proof.

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 permanent impairment.

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<sup>18</sup> See *C.T.*, Docket No. 22-0822 (issued November 29, 2022); *T.B.*, Docket No. 20-0642 (issued September 30, 2020).

<sup>19</sup> See *T.M.*, Docket No. 21-0677 (issued March 31, 2023); *V.S.*, Docket No. 19-1679 (issued July 8, 2020); *T.F.*, Docket No. 19-157 (issued April 21, 2020). In a May 27, 2020 report, Mr. Gallagher, a certified athletic trainer, determined that appellant had two percent permanent impairment of her whole person. However, Mr. Gallagher's rating opinion is of no probative value as he is not a physician within the meaning of FECA. Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice under State law. See 5 U.S.C. § 8101(2). In addition, neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the body as a whole. See *supra* note 14.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 5, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2024  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board