

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

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S.A., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
NATIONAL CEMETARY ADMINISTRATION, )  
FORT SAM HOUSTON NATIONAL )  
CEMETARY, San Antonio, TX Employer )

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**Docket No. 24-0397  
Issued: June 3, 2024**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 1, 2024 appellant filed a timely appeal from a February 7, 2024 merit decision of the Office of Workers' Compensation Programs. 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 met his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

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

## **FACTUAL HISTORY**

On May 10, 2022 appellant, then a 47-year-old cemetery caretaker, filed a traumatic injury claim (Form CA-1) alleging that on May 6, 2022 he sustained a low back injury when using construction equipment while in the performance of duty. He stopped work on May 10, 2022 and returned to work in a full-time light-duty position on May 16, 2022. On June 8, 2022 OWCP accepted appellant's claim for sprain of the ligaments of the lumbar spine, sprain of the sacroiliac joint, and segmental and somatic dysfunction of the lumbar region.

On July 18, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a report dated October 10, 2023, Dr. Salvador Baylan, a physical medicine and rehabilitation specialist, examined appellant to determine a date of maximum medical improvement (MMI) and a permanent impairment rating. He noted the accepted diagnoses of sprain of the ligaments of the lumbar spine, sprain of the sacroiliac joint, and segmental and somatic dysfunction of the lumbar region. On physical examination of the lumbosacral region, Dr. Baylan observed tender spinal processes and paraspinals, with otherwise normal findings. Strength of the lower extremities was observed as normal, as was sensation to pinprick and reflexes. Dr. Baylan opined that appellant reached MMI on the date of his examination, October 10, 2023. Referring to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>2</sup> he concluded that appellant had a permanent impairment rating of zero percent. Dr. Baylan explained that the evaluation did not demonstrate any evidence of lower extremity involvement from radiculopathy and no motor, sensory, or reflex changes.

On January 9, 2024 OWCP referred appellant's claim, along with a statement of accepted facts (SOAF) and the medical record to Dr. Jack L. Miller, a physician Board-certified in physiatry and occupational medicine serving as a district medical adviser (DMA), in order to determine whether appellant had permanent impairment due to his accepted conditions.

In a January 18, 2024 report, Dr. Miller reviewed appellant's history of injury, the SOAF, the medical record, as well as the October 10, 2023 report of Dr. Baylan. Referencing the A.M.A., *Guides*, and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*), he opined that appellant's spinal nerve impairment was class zero. As such, there was no ratable spinal nerve impairment. Dr. Miller explained that Dr. Baylan found no motor, sensory, or reflex deficits on physical examination, nor were there objective findings of lumbar or sacral radiculopathy. Dr. Baylan concurred with Dr. Miller as to the date of MMI.

By decision dated February 7, 2024, OWCP denied appellant's schedule award claim. It relied upon the October 10, 2023 report of Dr. Baylan and the January 18, 2024 report of Dr. Miller in finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body.

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

## 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* is used to calculate schedule awards.<sup>6</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>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> 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.<sup>10</sup>

## 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.

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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); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>7</sup> 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see B.M.*, Docket No. 19-1069 (issued November 21, 2019); *B.W.*, Docket No. 18-1415 (issued March 8, 2019); *J.M.*, Docket No. 18-0856 (issued November 27, 2018); *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> *Supra* note 3 at Chapter 3.700. *The Guides Newsletter* is included as Exhibit 4.

<sup>10</sup> *L.S.*, Docket No. 20-1730 (issued August 26, 2020).

On October 10, 2023 Dr. Baylan examined appellant to determine a date of MMI and a permanent impairment rating. Referring to the A.M.A., *Guides*, he rendered an impairment rating of zero percent. Dr. Baylan explained that the evaluation did not demonstrate any evidence of lower extremity involvement from radiculopathy and no motor, sensory, or reflex changes. He opined that appellant reached MMI on the date of his examination, October 10, 2023.

OWCP properly referred appellant's claim, along with an SOAF and the medical record, to Dr. Miller, serving as the DMA for OWCP. On January 18, 2024, Dr. Miller reviewed the SOAF and medical record, including the October 10, 2023 report of Dr. Baylan. Referencing *The Guides Newsletter*, he concurred with Dr. Baylan as to the finding that appellant had zero percent permanent impairment of the lower extremities due to a lack of motor or sensory deficits or lumbar or sacral radiculopathy.

The Board finds that Dr. Baylan and the DMA both properly concluded that appellant did not have lower extremity impairment. There is no medical evidence of record indicating a peripheral spinal nerve impairment rendered in conformity with the A.M.A., *Guides* and *The Guides Newsletter*, due to lower extremity motor or sensory deficits. As such, the Board finds that appellant has not met his 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.

### **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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 7, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 3, 2024  
Washington, DC

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

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

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