

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

S.V., Appellant)	
)	
and)	Docket No. 24-0319
)	Issued: May 15, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Coppell, TX, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 5, 2024 appellant filed a timely appeal from a November 6, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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.

FACTUAL HISTORY

On May 17, 2023 appellant, then a 69-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 1, 2023 he sustained a low back injury when lifting a heavy

¹ 5 U.S.C. § 8101 *et seq.*

box while in the performance of duty. OWCP accepted the claim for strain of the lumbar and sacroiliac region.

On September 14, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated September 26, 2023, OWCP informed appellant of the deficiencies of his schedule award claim. It advised him of the type of medical evidence necessary, including an impairment rating utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)² and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment* (July/August 2009) (*The Guides Newsletter*). OWCP afforded appellant 30 days to submit the evidence.

In a report dated October 4, 2023, Dr. Dempsey Gordon, an osteopath Board-certified in family practice, recounted appellant's physical examination findings and opined that he had reached maximum medical improvement (MMI) that same date. He utilized *The Guides Newsletter* and the A.M.A., *Guides*. Dr. Gordon provided findings, relating that appellant had normal muscle strength of the lower extremities and a normal sensory examination in the lower extremities. He concluded that appellant had a permanent impairment rating of zero percent. In reaching his conclusion, Dr. Gordon evaluated appellant's permanent impairment for the right and left L5 nerve. He noted that appellant had a class of diagnosis (CDX) resulting in 0 percent permanent impairment, a grade modifier for functional history (GMFH) of 0, and a grade modifier for clinical studies (GMCS) of 0. Dr. Gordon therefore concluded that appellant had zero percent permanent impairment of the L5 nerve root, pursuant to *The Guides Newsletter*.

By decision dated November 6, 2023, OWCP denied appellant's claim for a schedule award, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body due to his accepted employment injury.

LEGAL PRECEDENT

The schedule award provisions of FECA³ and its implementing regulations⁴ 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

² A.M.A., *Guides* (6th ed. 2009).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

adoption.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.⁶

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: A Contemporary Model of Disablement*.⁷ Under the sixth edition, for lower extremity impairments, the evaluator identifies the impairment of the CDX, which is then adjusted by GMFH, a grade modifier for physical examination (GMPE), and/or a GMCS.⁸ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁹ 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.¹⁰

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.¹¹ However, a schedule award is permissible where the employment-related condition affects the upper and/or lower extremities.¹² The sixth edition of the A.M.A., *Guides* provides a specific methodology for rating spinal nerve extremity impairment using *The Guides Newsletter*, which is a supplemental publication of the sixth edition of the A.M.A., *Guides*. It offers an approach to rating spinal nerve impairments based on evidence of radiculopathy affecting the upper and/or lower extremities.¹³

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.¹⁴ 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 (date of MMI), describes the impairment in sufficient detail so that it can be

⁵ *Id.* at § 10.404(a); *see R.M.*, Docket No. 20-1278 (issued May 4, 2022); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

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

⁷ A.M.A., *Guides* 3, section 1.3.

⁸ *Id.* at 493-556.

⁹ *Id.* at 521.

¹⁰ *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).

¹¹ 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).

¹² *Supra* note 6 at Chapter 2.808.5c(3) (March 2017).

¹³ *Supra* note 6 at Chapter 3.700, Exhibit 4 (January 2010).

¹⁴ *See Q.N.*, Docket No. 23-0636 (issued October 31, 2023); *E.D.*, Docket No. 19-1562 (issued March 3, 2020); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.¹⁵

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.

In support of his claim, appellant submitted an October 4, 2023 report from Dr. Gordon, who examined appellant and related normal muscle strength and sensory findings of the lower extremities. Dr. Gordon found that appellant had reached MMI. He utilized *The Guides Newsletter* and explained that appellant had a permanent impairment rating of zero percent of the lower extremities due to his accepted lumbar spine condition. As there is no probative medical evidence of record demonstrating a permanent impairment, the medical evidence of record is insufficient to establish permanent impairment of a scheduled member or function of the body causally related to the accepted employment injury.¹⁶ The Board, therefore, 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.

¹⁵ *Supra* note 6 at Chapter 2.808.5a (March 2017).

¹⁶ *See J.S.*, Docket No. 23-0439 (issued September 18, 2023), *K.J.*, Docket No. 19-0901 (issued December 6, 2019).

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2024
Washington, DC

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

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

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