United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 24-0625**
	)	**Issued: September 17, 2024**
U.S. POSTAL SERVICE, BUSHKILL POST OFFICE, Bushkill, PA, Employer	)	

Appearances:
Michael D. Overman, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On May 22, 2024 appellant, through counsel, filed a timely appeal from a December 7, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that following the December 7, 2023 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish more than nine percent permanent impairment of the left lower extremity and seven percent permanent impairment of the right lower extremity, for which she previously received schedule award compensation.

FACTUAL HISTORY

On June 22, 2016 appellant, then a 47-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained degeneration of her lumbar intervertebral disc due to factors of her federal employment, including excessive pushing/pulling heavy items, and repetitive bending, and twisting. On November 29, 2016 she underwent an interbody fusion L5-S1, placement of interbody graft L5-S1, hemilaminectomy L5 and S1, posterior with posterior instrumentation, iliac crest bone marrow aspiration, placement of autograft and radiographic supervision. On January 11, 2017 OWCP accepted the claim for aggravation of intervertebral disc degeneration, lumbar region; secondary radiculopathy, lumbar region; and secondary spinal stenosis, lumbar region. It paid appellant intermittent wage-loss compensation on the supplemental and periodic rolls from December 10, 2016 until January 12, 2018.

In a December 6, 2018 report, Dr. David Weiss, an osteopathic Board-certified orthopedic surgeon, provided a permanent impairment evaluation in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[4] and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*). He opined that appellant reached maximum medical improvement (MMI) on December 6, 2018, and had 21 percent permanent impairment of the left lower extremity, and 14 percent permanent impairment of the right lower extremity.

On February 14, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On March 21, 2019 Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), reviewed Dr. Weiss' report, and opined that it was unreliable, as it conflicted with other medical reports regarding appellant's physical examination findings. He recommended a second opinion impairment evaluation.

On March 26, 2019 OWCP referred appellant, a March 25, 2019 statement of accepted facts (SOAF), the medical record, and a series of questions for a second opinion examination with Dr. Noubar Didizian, a Board-certified orthopedic surgeon.

In an April 19, 2019 report, Dr. Didizian reviewed the SOAF, and the medical evidence of record. He related appellant's physical examination findings and opined that appellant had reached MMI on December 16, 2017. Under the A.M.A., *Guides* and *The Guides Newsletter*, Dr. Didizian found that appellant had nine percent permanent impairment of the left lower extremity and seven percent permanent impairment of the right lower extremity. In a May 11, 2019 report, the DMA,

[4] A.M.A., *Guides* (6th ed. 2009).

Dr. Katz, reviewed Dr. Didizian's report, and concurred with that assessment. He also found that the date of MMI was April 10, 2019, the date of Dr. Didizian's examination.

By decision dated September 11, 2019, OWCP issued a schedule award for nine percent permanent impairment of the left lower extremity and seven percent permanent impairment of right lower extremity. The period of the award ran for 46.08 weeks from April 10, 2019 to February 26, 2020.

On September 23, 2019 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. Following a preliminary review, by decision dated November 6, 2019, a hearing representative set aside OWCP's September 11, 2019 decision finding that a conflict in medical opinion existed between Dr. Weiss, and second opinion physician Dr. Didizian, and the DMA Dr. Katz relative to the validity of appellant's physical examination findings regarding neurologic deficits, which required referral to an impartial medical examiner (IME).

To resolve the conflict, on November 20, 2019, OWCP referred appellant, the medical record, a November 19, 2019 SOAF, and a series of questions to Dr. William H. Spellman, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a January 14, 2020 report, Dr. Spellman reviewed the medical record and SOAF. He related appellant's physical examination findings, noting that her limited range of motion demonstrated on examination was not consistent with measurements found on multiple previous examinations by other clinicians. Dr. Spellman referred to the A.M.A., *Guides* and *The Guides Newsletter*, and determined that the range of motion (ROM) impairment was not applicable as an alternative to diagnosis-based impairment (DBI). Referring to Proposed Table 2, Spinal Nerve Impairment: Lower Extremity Impairments, he determined that for the left lower extremity, appellant had mild motor strength deficit at L5 with a default impairment of five percent impairment. Dr. Spellman determined that she had a grade modifier for functional history (GMFH) of 2, a grade modifier for clinical studies (GMCS) of 1, and that application of the net adjustment formula resulted in seven percent left lower extremity motor impairment. He also determined that there was a mild sensory deficit at L5 with a default impairment of one percent impairment. Dr. Spellman determined that the GMFH was 2 and GMCS was 1 and that application of the net adjustment formula resulted in two percent impairment. He added the seven percent motor extremity impairment and the two percent sensory impairment for a total nine percent left lower extremity permanent impairment rating. For the right lower extremity, Dr. Spellman indicated that there was no sensory deficit. He determined that there was a mild motor strength deficit at L5, which had a default impairment of five percent. Dr. Spellman determined that the GMFH was 2, GMCS was 1, and that application of the net adjustment formula resulted in seven percent right lower extremity permanent impairment rating.

By decision dated February 13, 2020, OWCP denied the claim for an increased schedule award. It found that appellant was previously paid a schedule award for nine percent permanent impairment of the left lower extremity, and seven percent permanent impairment of the right lower extremity, and the medical evidence did not support an increase in permanent impairment.

On February 20, 2020 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on June 12, 2020.

In a June 3, 2020 report, Dr. Weiss indicated that Dr. Spellman agreed that appellant had seven percent permanent impairment of the left lower extremity due to motor strength deficit of the extensor hallucis longus. He also agreed that appellant had two percent permanent impairment for sensory deficit; however, the nerve root differed. Based on his December 6, 2018 evaluation of appellant, Dr. Weiss indicated that appellant had moderate motor strength deficit of the left quadriceps muscle, which Dr. Spellman did not find on his January 14, 2020 examination. He also indicated that while Dr. Spellman and he agreed that appellant had motor strength deficit of the right lower extremity which equated to seven percent permanent impairment, Dr. Spellman found no sensory abnormalities of the right lower extremity, and he did not use Semmes Weinstein Monofilament testing to determine sensation. Thus, Dr. Weiss concluded based on his December 6, 2018 impairment evaluation, that appellant had a left lower extremity permanent impairment of 21 percent, and a right lower extremity permanent impairment of 14 percent.

Additional evidence, including a June 12, 2020 lumbar magnetic resonance imaging (MRI) scan study, was received.

By decision dated August 27, 2020, an OWCP hearing representative remanded the case for further development. She determined that Dr. Spellman should review Dr. Weiss' December 2018 and June 2020 reports, and the additional diagnostic testing, and explain if there was any new discussion or objective findings supportive of a greater permanent impairment. The hearing representative directed OWCP to send Dr. Spellman's response to a new DMA with no prior affiliation with the case to determine whether the A.M.A., *Guides* were properly applied to the examination findings.

In supplemental reports dated September 27, 2020, and August 13 and October 25, 2021, Dr. Spellman found that the evidence provided remained insufficient to warrant a change in his prior rating of nine percent left lower extremity permanent impairment, and seven percent right lower extremity permanent impairment. He indicated that his examination of appellant was more current than that of Dr. Weiss' examination, which was performed more than one year prior. Dr. Spellman addressed appellant's 2018 electromyogram (EMG), but stated that while chronic S1 radiculopathy was suspected, it was not supported by other S1 muscles tested. Relative to the lumbar MRI scan, he stated that it did not document possible neural compromise at any level, other than L5-S1, which was consistent with the EMG. Dr. Spellman also noted that usually motor strength improved over time following a decompression procedure.

On January 14, 2022 OWCP referred appellant's medical record to Dr. Arthur Harris, a Board-certified orthopedic surgeon, serving as a DMA, to review the calculation of appellant's bilateral lower extremity permanent impairments.

In a report dated January 22, 2022, Dr. Harris, in his capacity as an OWCP DMA, referenced *The Guides Newsletter*, and found that appellant had seven percent permanent impairment of the right lower extremity secondary to mild motor weakness from right L5 radiculopathy. Relative to the left lower extremity, appellant had seven percent permanent impairment for residual problems with mild motor weakness from left L5 lumbar radiculopathy, and two percent permanent impairment for residual problems with moderate pain/impaired sensation from left L5 radiculopathy, for a total nine percent lower extremity permanent impairment. Dr. Harris opined that the date of MMI was January 14, 2020, the date of Dr. Spellman's examination.

By decision dated March 7, 2022, OWCP issued a *de novo* decision denying an increase in permanent impairment beyond the amount previously paid. It accorded the special weight of the medical evidence to Dr. Spellman, whose impairment calculations were verified by the DMA, Dr. Harris.

On March 16, 2022 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on June 6, 2022.

In a May 27, 2022 report, Dr. Weiss indicated that while Dr. Spellman noted in his January 14, 2020 report that he had examined appellant for "sensation to light touch and point sensation," he did not quantify the sensory deficit according to the Semmes Weinstein Monofilament method. Thus, he continued to opine, based on his December 6, 2018 impairment evaluation, that appellant had a left lower extremity permanent impairment of 21 percent and a right lower extremity permanent impairment of 14 percent.

By decision dated August 19, 2022, OWCP's hearing representative set aside OWCP's March 7, 2022 decision. The hearing representative found that the DMA, Dr. Harris, did not discuss any of the other impairment ratings of record when he agreed with Dr. Spellman's permanent impairment rating. The hearing representative remanded the case for referral to Dr. Harris for a review of Dr. Weiss' supplemental reports of June 3 and May 27, 2022.

In a supplemental report dated September 7, 2022, the DMA, Dr. Harris, indicated that the discrepancies in the documentation of sensory deficits by Dr. Spellman in his January 14, 2020 report, and Dr. Weiss in his December 6, 2018 report, could be explained as the evaluations were performed more than a year apart, and it was not uncommon to see differences in objective findings when examinations are performed by two different examiners at different points in time. He indicated that both physicians' impairment evaluations were consistent with the A.M.A., *Guides*, and the only way to resolve the discrepancy would be for appellant to undergo another permanent impairment evaluation.

On October 21, 2022 OWCP determined that a conflict of medical opinion existed between Dr. Weiss and Dr. Spellman, who was identified as a second opinion physician, regarding permanent impairment of appellant's bilateral left lower extremities due to the June 17, 2016 accepted work injury. It referred appellant for an impartial medical examination with Dr. Amir Fayyazi, a Board-certified orthopedic surgeon.

In a March 8, 2023 report, Dr. Fayyazi reviewed a September 1, 2022 SOAF and appellant's medical record. He related appellant's physical examination findings from her January 26, 2023 evaluation. Dr. Fayyazi noted that his assessment was performed more than four years after the assessment by Dr. Weiss and three years after Dr. Spellman. He indicated that appellant did not demonstrate motor weakness, but there was evidence of a bilateral loss of sensation and loss of reflexes suggestive of radiculopathy. Dr. Fayyazi assigned a GMFH of 2, a grade modifier for physical examination (GMPE) of 1 and GMCS of 1, which resulted in a 10 percent whole person impairment. He indicated that his permanent impairment rating was closer to that of Dr. Spellman, rather than that of Dr. Weiss.

On April 18, 2023 OWCP referred the case file to Dr. Kenechukwa Ugokwe, a Board-certified neurosurgeon, serving as a DMA.

In a May 10, 2023 report, Dr. Ugokwe opined that as appellant was neurologically intact, her current permanent impairment was zero percent. Upon review of Dr. Fayyazi's March 8, 2023 report, he indicated that he disagreed with his permanent impairment rating, as he had calculated 10 percent whole person impairment. Dr. Ugokwe then indicated that he agreed with Dr. Fayyazi's opinion that his impairment calculation was more in line with Dr. Spellman, who had calculated nine percent left lower extremity impairment and seven percent right lower extremity impairment. He opined that appellant reached MMI on January 26, 2023. Dr. Ugokwe also indicated that Dr. Fayyazi did not provide an assessment using the ROM methodology, as the A.M.A., *Guides* did not allow for a rating for the diagnosis in question.

By decision dated May 16, 2023, OWCP issued a *de novo* decision denying appellant's claim for an increased schedule award.

On May 22, 2023 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on October 12, 2023.

By decision dated December 7, 2023, an OWCP hearing representative affirmed the May 16, 2023 decision with modification. The hearing representative accorded the special weight of the medical evidence to Dr. Spellman, the IME. The hearing representative found that Dr. Spellman had properly resolved the medical conflict between Dr. Weiss and Dr. Didizian, and there was no basis to procedurally warrant or require additional development in the form of a new impartial medical examination with Dr. Fayyazi. The hearing representative further considered Dr. Fayyazi's report for its own intrinsic value and found that it lacked probative value.

LEGAL PRECEDENT

The schedule award provisions of FECA,[5] and its implementing federal regulations,[6] 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 loss of a member shall be determined. 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.[7] 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.[8]

[5] *Supra* note 2.

[6] 20 C.F.R. § 10.404.

[7] 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 2.808.5a (March 2017); *see also id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[8] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's *International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement*.[9] Under the sixth edition, the evaluator identifies the impairment class of diagnosis (CDX), which is then adjusted by the GMFH, GMPE, and/or GMCS.[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[11] Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[12]

Neither FECA nor its regulations provide for a schedule award for permanent impairment of the back or to the body as a whole.[13] Furthermore, the back is specifically excluded from the definition of organ under FECA.[14] 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 permanent 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.[15] 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.[16]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[17]

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or IME) who shall make an examination.[18] When there exists opposing medical reports of virtually equal weight and rationale and the case is

[9] A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3.

[10] *Id*. at 494-531.

[11] *Id*. at 411.

[12] *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

[13] 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see A.H.*, Docket No. 19-1788 (issued March 17, 2020); *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

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

[15] *Supra* note 7 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

[16] *L.S.*, Docket No. 10-1730 (issued August 26, 2020); *A.H., supra* note 13.

[17] *See supra* note 7 at Chapter 2.808.6f (March 2017).

[18] 5 U.S.C. § 8123(a); *see B.T.*, Docket No. 24-0736 (issued August 23, 2024); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[19]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish more than nine percent permanent impairment of the left lower extremity and seven percent permanent impairment of the right lower extremity, for which she previously received schedule award compensation.

OWCP found a conflict in the medical opinion evidence between Dr. Weiss, an attending physician, and Dr. Didizian, a second opinion physician, concerning appellant's neurologic deficits in calculating appellant's bilateral permanent impairments of the lower extremities. In order to resolve the conflict, it properly referred appellant to Dr. Spellman, pursuant to 5 U.S.C. § 8123(a), for an impartial medical examination.

In a January 14, 2020 report, Dr. Spellman reviewed the medical record and SOAF and performed a physical examination. He set forth his impairment findings under the A.M.A., *Guides* and Proposed Table 2 of *The Guides Newsletter*, and determined that the ROM impairment methodology was not applicable as an alternative to diagnosis-based impairment (DBI) methodology. For the left lower extremity, Dr. Spellman opined that appellant had a total nine of percent permanent impairment, comprised of seven percent motor extremity impairment, and two percent sensory impairment. For the seven percent motor extremity impairment, he found that appellant had a mild motor strength deficit at L5, with a default value of five percent impairment. Dr. Spellman assigned GMFH of 2, a GMCS of 1 and applied the net adjustment formula, which resulted in seven percent left lower extremity motor impairment. For the diagnosis of mild sensory deficit at L5, he found a default value of one percent impairment. Dr. Spellman determined that the GMFH was 2 and GMCS was 1. He applied the net adjustment formula, which resulted in two percent impairment. For the left L5 nerve root, Dr. Spellman properly added the seven percent motor extremity impairment, and the two percent sensory impairment, for a total nine percent left lower extremity permanent impairment. For the right lower extremity, he indicated that there was no sensory deficit. Dr. Spellman determined that appellant's mild motor strength deficit at L5 was a default impairment of five percent. He determined that GMFH was 2 and GMCS was 1. Dr. Spellman applied the net adjustment formula, which resulted in seven percent right lower extremity permanent impairment rating.

In supplemental reports dated September 27, 2020, and August 13 and October 25, 2021, Dr. Spellman opined that there was insufficient evidence to warrant a change in his permanent impairment ratings reflected in his January 14, 2020 report. He further explained that motor strength commonly improved over time following a decompression procedure, and his examination of appellant was more current than Dr. Weiss' examination. Dr. Spellman also noted that while chronic S1 radiculopathy was suspected on the 2018 EMG, it was not supported by other S1 testing, and the lumbar MRI did not document neural compromise at any level other than L5-

[19] *B.M.*, Docket No. 19-1069 (issued November 21, 2019); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

S1, consistent with appellant's EMG. In his February 7, 2022 report, the DMA, Dr. Harris, agreed with Dr. Spellman's permanent impairment rating.

The Board finds that the special weight of the medical opinion evidence is represented by the thorough, well-rationalized opinion of Dr. Spellman. Dr. Spellman properly applied the A.M.A., *Guides* and *The Guides Newsletter* to his examination findings, and explained that appellant had nine percent permanent impairment of the left lower extremity, and seven percent permanent impairment of the right lower extremity. The Board finds that Dr. Spellman's opinion has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issues of the present case. He properly utilized the DBI method to rate appellant's accepted lower extremity conditions. As Dr. Spellman's report is detailed, well rationalized, and based on a proper factual background, his opinion represents the special weight of the medical evidence. Consequently, appellant has not met her burden of proof to establish greater than nine percent permanent impairment of the left lower extremity, and seven percent permanent impairment of the right lower extremity, for which she previously received schedule award compensation.

The Board further finds that although OWCP declared a new conflict of medical opinion between Dr. Weiss and Dr. Spellman, there was no conflict. In his June 3, 2020 report, Dr. Weiss reiterated his prior conclusions that appellant had 21 percent left lower extremity impairment, and 14 percent right lower extremity impairment, as opposed to Dr. Spellman's 9 percent left lower extremity and 7 percent right lower extremity impairment. The Board notes that Dr. Weiss was on one side of the conflict created and resolved pursuant to 5 U.S.C. § 8123(a), and his additional reports do not create a new conflict. Additional reports from a physician on one side of the conflict that is properly resolved by an IME are generally insufficient to overcome the special weight accorded the IME's report or to create a new conflict.[20] Thus, OWCP improperly determined that a new conflict of medical opinion existed between Dr. Weiss and Dr. Spellman.

The Board, therefore, finds that Dr. Fayyazi's opinion may not be afforded the special weight of an IME, and should instead be considered for its own intrinsic value.[21] Dr. Fayyazi's opinion is instead considered to be that of a second opinion. In his March 8, 2023 report, he found that appellant had 10 percent whole person permanent impairment. FECA, however, does not authorize schedule awards for impairments of the whole person. Consequently, Dr. Fayyazi's report is of no probative value, as it is not in accordance with the standards adopted by OWCP.[22]

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.

[20] *See E.B.*, Docket No. 23-1021 (issued February 16, 2024); *T.B.*, Docket No. 12-0866 (issued September 25, 2012); *Harrison Combs, Jr.*, 45 ECAB 716 (1994); *Dorothy Sidwell*, 41 ECAB 857 (1990).

[21] *See S.L.*, Docket No. 24-0220 (issued May 15, 2024); *S.B.*, Docket No. 22-1067 (issued April 20, 2023); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

[22] *See C.M.*, Docket No. 19-0125 (issued August 16, 2019); *L.G.*, Docket No. 14-1786 (issued December 10, 2014); *James Kennedy, Jr.*, 40 ECAB 620 (1989).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish more than nine percent permanent impairment of the left lower extremity, and seven percent permanent impairment of the right lower extremity, for which she previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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