

On appeal, appellant contends that the second opinion examination by Dr. Kala Danushkodi, Board-certified in physical medicine and rehabilitation, was insufficient to establish a zero percent impairment rating of her lower extremities.

FACTUAL HISTORY

OWCP accepted that on December 9, 2008 appellant, then a 35-year-old nursing assistant, sustained lumbar radiculopathy and lumbar herniated disc at L4-5 and L5-S1 when she slipped and fell on ice at work. It authorized lumbar epidural spinal injections, medial branch blocks and a left sacroiliac (SI) joint injection.

On June 18, 2010 appellant filed a claim for a schedule award.

In a February 23, 2010 report, Dr. Gary A. Thompson, a Board-certified family medicine physician, stated that he had been treating appellant since April 1, 2009 for a lower back injury sustained on December 9, 2008 due to a slip and fall. He indicated that she exacerbated her back on April 1, 2009 and had been under his care through January 15, 2010. Dr. Thompson opined that appellant had reached the maximum recovery and was able to return back to full-time work duties without limitations. He declined to provide an impairment rating.

In a June 25, 2010 letter, OWCP notified appellant of the deficiencies of her schedule award claim and allotted 30 days for the submission of additional evidence.

By letter dated July 6, 2010, appellant requested a second opinion examination in order to obtain an impairment rating in support of her claim.

On July 28, 2010 an OWCP district medical adviser determined that appellant was eligible for consideration of an impairment rating due to her accepted conditions.

In a December 17, 2010 report, Dr. Thompson released appellant to return to work on December 21, 2010. Appellant also submitted two reports dated December 15, 2009 from Dr. Jennifer A. Elliott, a Board-certified anesthesiologist, who diagnosed lower back pain and left SI and reported administration of a left SI joint injection.

OWCP referred appellant to Dr. Danushkodi for a second opinion evaluation. In a report dated April 5, 2011, Dr. Danushkodi provided a lower extremity evaluation under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (hereinafter, A.M.A., *Guides*). She noted that the impairment rating for an axial skeletal condition is based solely on permanent radicular symptoms and signs affecting the lower extremities. Based on the regional grid, nerve involvement, Dr. Danushkodi assigned appellant to class 0 as there was no objective sensory or motor deficit. Appellant indicated that the Functional History adjustment (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS) were not relevant to appellant's rating. Dr. Danushkodi concluded that appellant had a zero percent permanent impairment of the lower extremities under Table 16-12 (Peripheral Nerve Impairment -- Lower Extremity Impairments).³

³ A.M.A., *Guides* (6th ed. 2009), pp. 534-36.

On May 1, 2011 an OWCP medical adviser concurred with Dr. Danushkodi's second opinion report and concluded that appellant had zero percent impairment ratings of the right and left lower extremity based on the sixth edition of the A.M.A., *Guides*. He noted that appellant had no radicular pain, sensory changes or weakness due to the accepted lumbar spine conditions and found the date of maximum medical improvement to be April 5, 2011.

By decision dated May 5, 2011, OWCP denied appellant's schedule award claim on the grounds that the medical evidence did not establish a ratable impairment of a scheduled member. It relied upon Dr. Danushkodi's April 5, 2011 report and OWCP's medical adviser's May 1, 2011 report in reaching this determination.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim, including that she sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.⁴

The schedule award provision of FECA⁵ and its implementing regulations⁶ 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 of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁸ It is well established that, in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.⁹ A schedule award is not payable under section 8107 of FECA for an impairment of the whole person.¹⁰

⁴ See, e.g., *Bobbie F. Cowart*, 55 ECAB 476 (2004). In *Cowart*, the employee claimed entitlement to a schedule award for permanent impairment of her left ear due to employment-related hearing loss. The Board determined that appellant did not establish that an employment-related condition contributed to her hearing loss and, therefore, it denied her claim for entitlement to a schedule award for the left ear.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.*

⁸ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁹ See *Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(3) (September 1995). This portion of OWCP procedure provides that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

¹⁰ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

A schedule award is not payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.¹¹ As neither FECA nor the regulation provide for the payment of a schedule award for the permanent loss of use of the back or spine, no claimant is entitled to such an award.¹² However, as FECA makes provision for the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originates in the spine, if the medical evidence establishes impairment as a result of the employment injury.¹³

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁴

ANALYSIS

The Board finds that the medical evidence fails to establish that appellant sustained any permanent impairment to a scheduled member of the body. OWCP accepted her claim for lumbar radiculopathy and lumbar herniated disc at L4-5 and L5-S1. Although appellant may not receive a schedule award for permanent impairment to her back,¹⁵ she may be entitled to a schedule award for any permanent impairment to her lower extremities, provided the medical evidence establishes such impairment.¹⁶ However, the medical evidence of record does not establish that she sustained permanent impairment to her legs due to the accepted back conditions.

The Board finds that OWCP properly relied on a May 1, 2011 report from OWCP's medical adviser who concluded that appellant had no permanent impairment of a scheduled member under the sixth edition of the A.M.A., *Guides*. OWCP's medical adviser properly reviewed the medical record and found no basis for rating impairment to a scheduled member of the body.¹⁷ He reviewed an April 5, 2011 assessment of Dr. Danushkodi, a Board-certified

¹¹ See *Tania R. Keka*, 55 ECAB 354 (2004).

¹² See *id.* FECA itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

¹³ See *George E. Williams*, 44 ECAB 530 (1993). In 1966, amendments to FECA modified the schedule award provision to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member.

¹⁴ See *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

¹⁵ 5 U.S.C. § 8101(19); *James E. Mills*, 43 ECAB 215 (1991).

¹⁶ See *George E. Williams*, *supra* note 13.

¹⁷ The Board notes that it is appropriate for an OWCP medical adviser to review the clinical findings of the treating physician to determine the permanent impairment. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.5(c) (September 1995); *Richard R. LeMay*, 56 ECAB 341 (2006).

physical medicine and rehabilitation physician serving as an OWCP referral physician.¹⁸ The medical adviser noted that Dr. Danushkodi found no radicular pain, sensory changes or weakness due to the accepted lumbar spine conditions and concluded that appellant had a zero percent impairment rating of the lower extremities. He properly concluded that there was no medical evidence of impairment to either lower extremity resulting from the accepted conditions and that, therefore, there was no ratable impairment of a scheduled member under the sixth edition of the A.M.A., *Guides*.

Appellant did not submit sufficient medical evidence to establish that she sustained a permanent impairment to a specified member, organ or function of the body listed in FECA or its implementing regulations. The medical evidence of record supports that she has no lower extremity impairment. The Board finds that appellant is not entitled to a schedule award as a result of her employment-related accepted back conditions.

On appeal appellant contends that the second opinion examination by Dr. Danushkodi was insufficient to establish a zero percent impairment rating of her lower extremities. The record reflects that Dr. Danushkodi's April 5, 2011 second opinion report was based on a review of appellant's medical records, medical history and a physical examination. As noted above, she properly provided an evaluation of appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*. Thus, the Board finds that appellant's arguments are not substantiated.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not established any ratable lower extremity impairment related to the accepted lumbar injury. Thus, the Board further finds that OWCP properly denied her claim for a schedule award.

¹⁸ In her April 5, 2011 report, Dr. Danushkodi evaluated appellant's permanent impairment under Table 16-12 (*Peripheral Nerve Impairment -- Lower Extremity Impairments*) on pages 534 through 536 of the sixth edition of the A.M.A., *Guides*. She noted that appellant had no objective sensory or motor deficit which fell under class 0 on this table and concluded that appellant had a zero percent permanent impairment of the lower extremities under the sixth edition of the A.M.A., *Guides*. The Board notes that the sixth edition of the A.M.A., *Guides* became effective on May 1, 2009. See *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board