United States Department of Labor
Employees' Compensation Appeals Board

DARLENE HAMILTON, Appellant	)	
and	)	**Docket No. 05-1053**
	)	**Issued: October 5, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Fayetteville, GA, Employer	)	

Appearances:
Darlene Hamilton, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 11, 2005 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated September 22, 2004 and February 17, 2005 which found that she had no permanent impairment that would entitle her to a schedule award. Pursuant to 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 her burden of proof to establish that she has a permanent impairment caused by her accepted lumbar strain and left knee strain that would entitle her to a schedule award.

FACTUAL HISTORY

On July 10, 2001 appellant, then a 39-year-old distribution clerk, filed a Form CA-1, traumatic injury claim, alleging that, on July 9, 2001, she injured her back, left leg and right elbow while moving a box of mail. The Office accepted that appellant sustained an

employment-related lumbar strain and left knee strain and she received appropriate compensation. A lumbar spine magnetic resonance imaging (MRI) scan was interpreted as demonstrating early degenerative disc disease at L5-S1. After intermittent periods of disability, on April 13, 2002 appellant returned to limited duty for eight hours a day. On July 22, 2002 she filed a schedule award claim.

Appellant came under the care of Dr. David A. Schiff, a Board-certified physiatrist.[1] In a treatment note dated April 28, 2002, the physician advised that appellant had reached maximum medical improvement and generally advised that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[2] she had a five percent whole body impairment. In a September 23, 2002 treatment note, Dr. Schiff noted that he had discussed the A.M.A., *Guides* with appellant. In notes dated June 16, 2003, Dr. Schiff again advised that maximum medical improvement had been reached on June 28, 2002, and on September 23, 2003 he diagnosed low back pain secondary to an annular tear at L5-S1 and provided permanent restrictions to appellant's physical activity.

By letter dated July 26, 2004, the Office advised appellant of the evidence she needed to provide to support a schedule award for her accepted lumbar strain and left knee strain. In a report dated August 31, 2004, an Office medical adviser noted that the Federal Employees' Compensation Act[3] did not provide for a schedule award for the spine and, as there was no evidence of nerve impairment secondary to a spinal condition affecting her lower extremities, she was not entitled to a schedule award. By decision dated September 22, 2004, the Office relied on the report of the Office medical adviser and found that appellant was not entitled to a schedule award for her accepted conditions.

On December 20, 2004 appellant requested reconsideration and submitted medical evidence. In addition to duplicates of treatment notes and evidence previously of record, appellant submitted form reports in which Dr. Schiff noted physical findings. In reports dated July 16, 2003 and September 27, 2004, he provided findings indicating that she had decreased range of motion of the spine and, in a treatment note dated September 27, 2004, reiterated his diagnosis of lower back pain with a history of annular tear at L5-S1.

In a report dated January 24, 2005, an Office medical adviser reviewed Dr. Schiff's September 27, 2004 report and stated that the only accepted conditions were a lumbar strain and left knee strain, noting that there was no imaging to confirm a tear, disc herniation or nerve root compression. By decision dated February 17, 2005, the Office denied modification of the September 22, 2004 decision, finding that the medical evidence did not support that appellant had any permanent partial impairment under the A.M.A., *Guides*.

[1] Appellant also provided a number of treatment notes from Dr. Michael P. Bernot, a Board-certified orthopedic surgeon, and other medical evidence regarding her right upper extremity and cervical spine. These, however, are not relevant to the case at hand which involves her lumbar spine and lower extremities.

[2] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[3] 5 U.S.C. §§ 8101-8193.

LEGAL PRECEDENT

Under section 8107 of the Act[4] and section 10.404 of the implementing federal regulations,[5] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[6]

Although the A.M.A., *Guides* include guidelines for estimating impairment due to disorders of the spine, under the Act a schedule award is not payable for injury to the spine.[7] In the 1960 amendments to the Act, the schedule award provisions were modified 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 originates in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an arm or leg even though the cause of the impairment originates in the spine.[8] An impairment should not be considered permanent until the clinical findings indicate that the medical condition is static and well stabilized.[9]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be reviewed by an Office medical adviser for an opinion concerning the nature and percentage of any impairment.[10]

---

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *See Joseph Lawrence, Jr., supra* note 2; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[7] *Pamela J. Darling*, 49 ECAB 286 (1998).

[8] *Thomas J. Engelhart*, 50 ECAB 319 (1999). Section 15.12 of the fifth edition of the A.M.A., *Guides* describes the method to be used for evaluation of impairment due to sensory and motor loss of the extremities as follows. The nerves involved are to be first identified. Then, under Tables 15-15 and 15-16, the extent of any sensory and/or motor loss due to nerve impairment is to be determined, to be followed by determination of maximum impairment due to nerve dysfunction in Table 15-17 for the upper extremity and Table 15-18 for the lower extremity. The severity of the sensory or motor deficit is to be multiplied by the maximum value of the relevant nerve. A.M.A., *Guides*, *supra* note 2 at 423.

[9] *Patricia J. Penney-Guzman*, 55 ECAB ____ (Docket No. 04-1052, issued September 30, 2004).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

ANALYSIS

It is appellant's burden to submit sufficient evidence to establish entitlement to a schedule award.[11] The Office determined that she was not entitled to a schedule award for her accepted lumbar strain and left knee strain because the medical evidence of record did not establish that she sustained any permanent impairment to a schedule member. While Dr. Schiff opined in a June 28, 2002 report that appellant had reached maximum medical improvement and had a whole person impairment of five percent, the Board finds this report of little probative value because it is unclear how he arrived at this impairment rating.[12] He provided findings indicating that appellant had decreased spinal range of motion; however, a schedule award is not payable for an injury of the spine. Dr. Schiff did not find that there was any impairment to a lower extremity due to the accepted conditions.[13] In this case there is no evidence to indicate that appellant has any impairment of a schedule member.[14]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she is entitled to a schedule award for her accepted conditions.

[11] *Tammy L. Meehan*, 53 ECAB 229 (2001).

[12] *See Deborah J. Cottle*, 53 ECAB 284 (2002).

[13] *Pamela J. Darling*, *supra* note 7.

[14] The Board notes that appellant submitted evidence subsequent to the February 17, 2005 decision of the Office. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Furthermore, the Board has long recognized that, if a claimant's employment-related condition worsens in the future, he or she may apply for an increased schedule award. *See Robert E. Cullison*, 55 ECAB ____ (Docket No. 04-641, issued June 2, 2004); *Richard Larry Enders*, 48 ECAB 184 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 17, 2005 and September 22, 2004 be affirmed.

Issued: October 5, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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