

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

MICHAEL S. MINA, Appellant)	
)	
and)	Docket No. 05-1763
)	Issued: February 7, 2006
DEPARTMENT OF VETERANS AFFAIRS,)	
PHILADELPHIA VETERANS HOSPITAL,)	
Philadelphia, PA, Employer)	
)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On August 24, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 18, 2005 denying a schedule award for erectile dysfunction. 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 established that his erectile dysfunction condition was caused or aggravated by the accepted work injury.

FACTUAL HISTORY

On April 3, 2000 appellant, then a 48-year-old pharmacist, filed a claim for low back and left leg pain which resulted after lifting a case of Metamucil weighing approximately 10 pounds. Appellant stopped work immediately following the incident. On June 16, 2000 appellant underwent a microsurgical hemilaminectomy, foraminotomy and removal of a herniated disc, L4-5, left side. He returned to full duty as a supervisory pharmacist on September 18, 2000. On

January 31, 2001 the Office accepted the claim for aggravation of a preexisting herniated disc at L4-5 and disc excision and paid appropriate compensation benefits.

On December 14, 2001 the Office received an undated statement from appellant's attending physician, Dr. Richard Close, a Board-certified neurosurgeon, who indicated that appellant had reached maximum medical improvement with respect to his work injury and was being referred to Dr. George L. Rodriquez for a permanent impairment rating.¹

On May 15, 2002 appellant filed a Form CA-7 claim for compensation for a schedule award. Submitted with the claim was a February 6, 2002 report from Dr. Rodriquez, who performed an evaluation for an impairment rating for loss of use of the lower extremities and for erectile dysfunction.² Dr. Rodriquez noted the history of the injury and appellant's complaint of erectile dysfunction. He opined that appellant had a 19 percent left lower extremity impairment and a 19 percent whole person impairment as a result of moderate erectile dysfunction secondary to the April 3, 2000 work injury.³

In a June 5, 2002 report, an Office medical adviser noted problems with Dr. Rodriquez's report, as there was no mention of sexual dysfunction due to nerve root involvement. He pointed out that erectile dysfunction, in the absence of bowel or bladder dysfunction, may be due to unrelated difficulties and not due to cauda equine syndrome. Neurological and urological examinations were recommended.

The Office referred appellant, together with the medical record, a statement of accepted facts and list of questions, to Dr. Richard Bennett, a Board-certified neurologist, for a second opinion evaluation, which was held on August 16, 2002. Appellant also underwent an electromyogram and nerve conduction velocity studies on September 17, 2002. In a September 17, 2002 report, Dr. Bennett felt an impairment rating was not appropriate as appellant had not reached maximum medical improvement.

The Office referred appellant, together with the medical record, a statement of accepted facts and list of questions, to Dr. Marvin Marx, a Board-certified urologist, for a second opinion evaluation. In an August 21, 2002 report, Dr. Marx noted that appellant's complaints of erectile dysfunction began with a previous back injury of April 21, 1999, worsened on December 19, 1999 while carrying boxes and was aggravated by the April 4, 2000 injury. He also noted that appellant suffered from hypertension for 20 years and advised that those medications "may be a contributing factor to the chief complaint" and that appellant had refused pharmacologic therapy for his erectile dysfunction due to possible complications with his hypertension and anti-

¹ Dr. Rodriquez's credentials are not of record.

² The evidence of record reflects that the Office did not receive any further records confirming treatment of appellant's low back condition until 2002.

³ In a June 24, 2005 decision, an Office hearing representative found that the case was not in posture for a decision concerning appellant's schedule award claim for left lower extremity impairment. As no final decision on this aspect of the claim was reached prior to the filing of the instant appeal on August 24, 2005, it is not before the Board on the present appeal. *See* 20 C.F.R. § 501.2(c).

hypertensive medications. Dr. Marx opined that appellant's erectile dysfunction was related to the work injury as there was no dysfunction prior to the back injury but there was dysfunction following the injury. He opined that no estimate for maximum medical improvement of the sexual dysfunction could be made as medical therapy had not been instituted, but noted that with appropriate treatment full recovery would be expected.

By decision dated October 1, 2002, the Office denied appellant's claim for a schedule award finding that appellant had not reached maximum medical improvement.

In an October 20, 2002 letter, appellant requested a review of the written record. By decision dated March 18, 2003, an Office hearing representative set aside the Office's October 10, 2002 decision and remanded the case to the Office for further development with respect to the lower extremity schedule award claim. Regarding the erectile dysfunction claim, the hearing representative found that, as the issue of causal relationship had not been established, it was not appropriate to address appellant's entitlement to a schedule award.

After further development, in a January 8, 2004 decision, an Office hearing representative found that there was an unresolved conflict in the medical opinion as to whether appellant had an injury-related permanent impairment of his left leg and remanded the case for a referral to an impartial medical examiner. With respect to whether appellant's sexual dysfunction was caused by the work injury, the Office hearing representative found that the report of Dr. Marx lacked sufficient medical rationale to establish causal relationship. He directed the Office to further develop the medical evidence by referring appellant back to Dr. Marx for an updated evaluation.

In a March 10, 2004 report, Dr. Marx reexamined appellant and diagnosed sexual dysfunction/partial impotence which he opined was causally related to the work injury. He stated that the etiological condition associated with the sexual dysfunction and primary loss of sensation and impotency related to the injury was caused from the area of the bone grafting on the right iliac hip area. He opined that appellant's penile dysfunction was currently under satisfactory control with the use of erection enhancers and appellant had reached maximum medical improvement. Under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Marx found that appellant's penile dysfunctional rating could be determined by Table 13-12, "period 342" Class 1, 8 percent whole person impairment: sexual function is possible but with difficulty of erection and ejaculation. He further opined that "this classification was based on the scale of 1 to 20 whole person impairment, 1 percent being minimally affected and 20 percent being completely impotent."

In a March 21, 2004 report, an Office medical adviser reviewed the statement of accepted facts and medical evidence. The Office medical adviser stated that appellant did not have a disability or impairment related to sexual dysfunction as he was functioning well with Viagra. The Office medical adviser further stated that there was only a questionable relationship between appellant's sexual dysfunction and his L4-5 disc disease.

By decision dated March 29, 2004, the Office denied appellant's claim for a schedule award.

In a March 30, 2004 letter, appellant disagreed with the Office's March 29, 2004 decision and, in a May 3, 2004 letter, requested a review of the written record.

The record contains the April 26, 2004 report of Dr. D. Gary Kolva, a Board-certified neurologist to whom appellant was referred for an impartial medical evaluation regarding his left lower extremity impairment. He reviewed the reported facts of the case, noted appellant's symptoms and provided his examination findings with respect to appellant's sensory symptoms. With respect to appellant's reports of erectile dysfunction, Dr. Kolva opined that such dysfunction was not causally related to his work-related injury. He stated that a review of the record did not reveal injury to the spinal cord. Dr. Kolva stated that the Onuf nuclei reside in the conus of the spinal cord and the relevant perineal nerve is innervated by the S2, 3, 4 nerve roots, which had not been tested. He opined that the nature of appellant's disc injury would not affect those nerves. Dr. Kolva additionally stated that the factors of age and the usual offending risk factors of hypercholesterolemia and hypertension, coupled with medications, affected appellant's erectile functioning. He opined that there was no evidence to support a traumatic-induced erectile dysfunction and that appellant's injuries were on the wrong locale anatomically to produce such symptoms. Dr. Kolva opined that appellant experienced the advances of age, medications, and his systemic illnesses of hypertension and hyperlipidemia, effectively working through arteriosclerotic disease changes, which impacted on his sexual performance.

In a March 29, 2005 decision, an Office hearing representative set aside the March 29, 2004 decision, finding that Dr. Marx did not provide a well-reasoned medical opinion on the causal relationship between appellant's sexual dysfunction and the accepted conditions of preexisting herniated disc at L4-5 and disc excision. The Office hearing representative directed the Office to refer the medical evidence back to Dr. Marx for clarification and a rationalized opinion on causal relationship with specific reference to the accepted conditions as noted in the statement of accepted facts.

In a July 15, 2005 letter, the Office provided Dr. Marx with a copy of Dr. Kolva's report and a list of questions. In an August 5, 2005 report, Dr. Marx advised that he reviewed informational reports relative to appellant's sexual dysfunction and reiterated his previous opinions. He stated that appellant experienced impotence notwithstanding the fact that he was functioning normally under medical therapy. Dr. Marx indicated that the condition was related to the work injury and exacerbated by subsequent injuries. Appellant's examination of March 10, 2004 revealed a loss of sensation over the ilioinguinal nerve distribution below the bone graft scar areas which innervated a branch nerve to the penis somatic sensation areas and, thus, would diminish the penile sexual response. He reiterated that appellant reached maximum medical improvement with the aid of medication and was sexually normal and, thus, would have no permanent disability. Dr. Marx opined that, because no permanent disability exists, appellant's degree of impairment would be zero. He further stated that the date of maximum medical improvement would coincide with his second examination on March 10, 2004.

In a decision dated August 18, 2005, the Office denied appellant's claim for a schedule award for penile dysfunction as it was not established that this condition was causally related to the accepted condition of aggravation of the herniated disc at L4-5. The Office found that Dr. Marx's report was of diminished probative value as it was not based on a proper factual or medical history. Specifically, the Office found that appellant's fractured left hip and subsequent

bone grafting were nonwork-related conditions. The Office further found that appellant had described to Dr. Marx work injuries occurring on April 21 and December 19, 1999 and, as the Office had no record of appellant's claims of such injuries, it did not consider such claims to be factual.

On appeal, appellant argued that his prior work injuries occurring in 1999 were of record and addressed in a January 31, 2001 Office memorandum.⁴ Appellant contends that Dr. Kolva's findings were inconsistent with that described by the other examiners and, thus, his opinion should be determined to be unreliable.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.⁶

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report.¹⁰

⁴ The Office memorandum noted that separate traumatic incidents occurred on April 21 and December 19, 1999 but found that no claims for traumatic injury had been filed with respect to these incidents.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ *See Connie Johns*, 44 ECAB 560 (1993).

The schedule award provision of the Act¹¹ and its implementing regulation¹² sets 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. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Office has adopted the A.M.A., *Guides* as the appropriate standard for evaluating scheduled losses. As of February 1, 2001, all new schedule awards are based on the fifth edition of the A.M.A., *Guides*.¹³

ANALYSIS

The Office denied appellant's claim for a schedule award for erectile dysfunction on the grounds that the medical evidence was not sufficient to establish a causal relationship between his erectile dysfunction and the accepted his aggravation of preexisting herniated disc at L4-5 and subsequent disc excision. The Board notes that, before application of the A.M.A, *Guides*, the Office must determine whether the claimed impairment of a scheduled member is causally related to the accepted work injury.

The Office developed the issue of whether appellant's erectile dysfunction was causally related to the aggravation of his preexisting herniated disc at L4-5 and subsequent disc excision. The issue of whether the work injury and subsequent surgery had adversely affected appellant's erectile dysfunction and resulted in a permanent penile impairment was first raised in Dr. Rodriguez's February 6, 2002 report. Dr. Rodriguez, however, did not describe any examination findings or testing related to that issue nor did he provide any explanatory rationale to support his conclusion on causal relationship.¹⁴ Accordingly, Dr. Rodriguez's opinion is insufficient to establish appellant's claim.

The Board notes that Dr. Marx's reports are based on a proper factual and medical history. As appellant's attorney notes on appeal, the Office was aware that appellant had two prior work incidents on April 21 and December 19, 1999. Dr. Marx's reports, however, are of diminished probative value and are insufficient to establish appellant's claim. On April 21, 2002 Dr. Marx failed to provide medical rationale in support of his stated opinion on causal relationship between appellant's erectile impairment and the accepted work injury to his back. The only explanation provided was that appellant reported a temporal relationship between his back injury and the onset or worsening of his sexual dysfunction. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without sufficient rationale, to establish causal relationship.¹⁵ As the Office

¹¹ 5 U.S.C. § 8107.

¹² 20 C.F.R. § 10.404.

¹³ *Rose V. Ford*, 55 ECAB ____ (Docket No. 04-15, issued April 6, 2004); see FECA Bulletin 01-05 (issued January 29, 2001).

¹⁴ *Donald W. Wenzel*, 56 ECAB ____ (Docket No. 05-146, issued March 17, 2005); *Juanita Pitts*, 56 ECAB ____ (Docket No. 04-1527, issued October 28, 2004).

¹⁵ See *Thomas D. Petrylak*, 39 ECAB 276 (1987).

had the responsibility to obtain a report which contained medical rationale on the issue of causal relationship, it properly referred appellant back to Dr. Marx for further evaluation. On March 10, 2004 Dr. Marx opined that the relationship between appellant's penile dysfunction and the accepted back injury was due to a loss of sensation over the ilioinguinal nerve distribution below the area of bone grafting on the right iliac hip area. He also stated that appellant only had his condition after the work injury. As noted, the fact that a condition arises after an injury and was not present before an injury is not sufficient to support causal relationship.¹⁶ The medical record reflects that appellant's bone grafting occurred prior to the work injury and was not related to any work injury accepted by this Office for this reason, Dr. Marx's opinion is of diminished value.¹⁷ The Office again asked Dr. Marx for clarification of his opinion on the causal relationship issue. On August 5, 2005 Dr. Marx merely reiterated his previous statements and conclusions. The Office properly developed the medical evidence through its attempts to obtain a rationalized opinion from Dr. Marx. However, for the reasons noted, the physician's opinion on causal relationship between appellant's erectile dysfunction condition and the accepted injury is of diminished probative value. There is no other rationalized evidence of record supporting causal relationship. The Board notes that Dr. Kolva's opinion did not support a relationship between appellant's erectile dysfunction condition and the accepted injury.

Therefore, Dr. Marx's reports are insufficient to establish that appellant's erectile dysfunction is related to the accepted employment injury. As appellant has not discharged his burden of proof on the issue of causal relationship, the Office properly denied his claim for a schedule award.

CONCLUSION

Appellant has not established that his claimed erectile dysfunction was caused or aggravated by the accepted back condition and disc excision and, thus, is not entitled to a schedule award.

¹⁶ *Id.*

¹⁷ *See Juanita Pitts, supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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