United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 06-1865**
	)	**Issued: January 30, 2007**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, New Castle, 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:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 9, 2006 appellant filed a timely appeal from a January 17, 2006 Office of Workers' Compensation Programs' decision adjudicating his schedule award claim. 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 more than a 13 percent impairment of his left leg.

FACTUAL HISTORY

On March 31, 1998 appellant, then a 42-year-old custodial group leader, filed a traumatic injury claim alleging that he injured his back and left knee when he slipped in mud and fell. The Office accepted his claim for a left knee strain and sprain and a lumbar sprain and strain.

Appellant returned to full duty on May 9, 1998. On May 17, 2005 he filed a claim for a schedule award.[1]

In a December 6, 2004 report, Dr. James P. Dambrogio, an attending family practitioner, found that appellant had a Grade 3 sensory deficit of his left leg which equaled a 60 percent impairment according to Table 15-15 at page 424 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[2] He found a 15 percent impairment of appellant's left leg due to unilateral spinal nerve root impairment at L3, L4 and L5, according to Table 15-18 at page 424. Dr. Dambrogio found an 8 percent impairment for 10 degrees of extension (flexion contracture), 8 percent for 4 degrees of varus deformity and 8 percent for 14 degrees of valgus deformity, according to Table 17-10 at page 537. He found a seven percent impairment for gait derangement, according to Table 17-5 at page 529. Dr. Dambrogio found a four percent impairment for a partial medial and lateral meniscectomy, according to Table 17-33 at page 546. He found a four percent impairment due to pain, applying Tables 18-4 and 18-5 at pages 576 and 580.[3]

On October 6, 2005 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and district medical adviser, found that appellant had a 13 percent impairment of his left leg, including 10 percent for a "mild" loss of range of motion, according to Table 17-10 at page 537 of the A.M.A., *Guides,* 2 percent for pain, according to Table 18-1 at page 574, and 1.25 percent for sensory radicular symptoms of the left S1 nerve root, according to Table 15-18 at page 424.[4] He found that the 5 percent maximum for an S1 nerve root deficit, multiplied by 25 percent for Grade 4[5] equaled a 1.25 percent impairment according to Tables 15-15 and 15-18 at page 424. Dr. Berman found that a magnetic resonance imaging (MRI) scan indicated no nerve root encroachment at the L3, L4 or L5 levels.[6] No impairment at the L3-5 levels was established based on the MRI scan and clinical findings. Dr. Berman noted that the cross-usage chart,

[1] Appellant has separate claims accepted for thoracic and lumbar strains sustained on July 22, 1998 and a lumbar strain and sprain and herniated disc sustained on May 24, 1999. He also has accepted claims for a finger laceration, lateral epicondylitis and an anxiety reaction.

[2] A.M.A., *Guides* (5th ed. 2001).

[3] Dr. Dambrogio also found right leg impairment and penile erectile dysfunction impairment. However, the Office has not accepted a right leg condition as related to the March 31, 1998 employment injury. Dr. Dambrogio did not explain how any impairment for loss of sexual function was due to the accepted back or left leg condition. *See* 20 C.F.R. § 10.404(a); *Wade Baker*, 54 ECAB 198 (2002).

[4] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

[5] Dr. Berman indicated that Grade 4 was consistent with Dr. Dambrogio's examination findings, rather than Grade 3.

[6] Dr. Berman indicated that the MRI scan date was June 15, 1999. However, there is no MRI scan of record with that date. It appears that Dr. Berman was referring to an August 4, 1998 MRI scan which notes mild to moderate disc herniation at the L5 to S1 level with mild to moderate encroachment upon the neural foramina, right greater than left.

Table 17-2 at page 526, precluded combination of range of motion impairment with gait derangement or a diagnosis-based estimate (appellant's medial and lateral meniscectomy).

By decision dated January 17, 2006, the Office granted appellant a schedule award for 37.44 weeks from December 6, 2004 to August 25, 2005 based on a 13 percent impairment of the left leg.[7]

LEGAL PRECEDENT

The schedule award provision of the Act[8] and its implementing regulation[9] 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, the Act 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 regulation as the appropriate standard for evaluating schedule losses.[10]

The A.M.A., *Guides* provides for three separate methods for calculating the lower extremity permanent impairment of an individual: anatomic, functional and diagnosis based.[11] The anatomic method involves noting changes, including muscle atrophy, nerve impairment and vascular derangement, as found during physical examination.[12] The diagnosis-based method may be used to evaluate impairments caused by specific fractures and deformities, as well as ligamentous instability, bursitis and various surgical procedures, including joint replacements and meniscectomies.[13] The functional method is used for conditions when anatomic changes are difficult to categorize or when functional implications have been documented, and includes range of motion, gait derangement and muscle strength.[14] The evaluating physician must determine which method best describes the impairment of a specific individual based on patient history and physical examination.[15] When uncertain about which method to use, the evaluator should calculate the impairment using different alternatives and choose the method or

[7] The Federal Employees' Compensation Act provides for 288 weeks of compensation for 100 percent loss or loss of use, of a lower extremity. 5 U.S.C. § 8107(c)(2). Multiplying 288 weeks by 13 percent equals 37.44 weeks of compensation.

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404.

[10] 20 C.F.R. § 10.404.

[11] A.M.A., *Guides* 525.

[12] *Id.*

[13] *Id.*

[14] *Id*. at Table 17-1.

[15] *Id*. at 548, 555.

combination of methods that gives the most clinically accurate impairment rating.[16] If more than one method can be used, the method that provides the higher impairment rating should be adopted.[17]

ANALYSIS

Dr. Dambrogio based his impairment rating, in part, on Chapter 15 of the A.M.A., *Guides* which addresses impairment of the spine, rather than applying Chapter 17 which addresses lower extremity impairment. He found that appellant had a Grade 3 sensory deficit of the left leg which equaled a 60 percent impairment according to Table 15-15 at page 424 of the A.M.A., *Guides.* Dr. Dambrogio found a 15 percent impairment of the left leg due to unilateral spinal nerve root impairment at L3, L4 and L5 according to Table 15-18 at page 424. Under the Act, a schedule award is not payable for the loss or loss of use of any member of the body or function that is not specifically enumerated in section 8107 of the Act or its implementing regulation.[18] The back is specifically excluded from coverage of the schedule award provision of the Act.[19] Although a schedule award may not be issued for an impairment to the back under the Act, such an award may be payable for impairment of the lower extremities that is due to an employment-related back condition.[20] Additionally, Chapter 15 provides for determination of impairment based on the "whole person." However, the Act does not provide for a schedule award based on impairment of the whole person.[21] For these reasons, it was inappropriate for Dr. Dambrogio to evaluate the impairment of appellant's left leg by using a section of the A.M.A., *Guides* pertaining to the back.[22] He should have used Chapter 17 in determining whether appellant had any left leg impairment.[23] Dr. Berman stated that appellant had a 1.25 percent impairment for sensory radicular symptoms of the left S1 nerve root according to Table 15-18 at page 424. However, as noted, Chapter 17 should be applied to a lower extremity impairment rating, not Chapter 15.

Dr. Dambrogio's evaluation of appellant's left leg impairment included range of motion impairment. He found an 8 percent impairment for 10 degrees of extension, 8 percent for 4 degrees of varus deformity and 8 percent for 14 degrees of valgus deformity, according to Table 17-10 at page 537. However, 8 percent is the percentage provided in Table 17-10 for a

[16] *Id*. at 526.

[17] *Id*. at 527, 555.

[18] *See Leroy M. Terska,* 53 ECAB 247 (2001).

[19] 5 U.S.C. § 8101(19); *see also Vanessa Young,* 55 ECAB 575 (2004).

[20] *Vanessa Young, supra* note 19; *Gordon G. McNeill,* 42 ECAB 140 (1990).

[21] *Tania R. Keka,* 55 ECAB 354 (2004); *Guiseppe Aversa,* 55 ECAB 164 (2003).

[22] *Guiseppe Aversa, supra* note 21 (the Board found that the impartial medical specialist improperly used Chapter 15 in evaluating right leg impairment caused by a spinal injury).

[23] The introduction to Chapter 17 at page 523 states that this chapter provides criteria for evaluating permanent impairment of the lower extremities. A.M.A., *Guides,* 523, 525; *see also* 555, 17.3, Lower Extremity Impairment Evaluation Procedure Summary and Examples.

whole person impairment rating. Table 17-10 provides for a 20 percent impairment for the lower extremity for each of appellant's three range of motion deficits, for a total range of motion impairment of 60 percent.[24] The district medical adviser stated that appellant had a 10 percent impairment for a "mild" loss of range of motion, according to Table 17-10 at page 537. However, he did not apply the range of motion measurements obtained by Dr. Dambrogio. Applying the measurements for extension (flexion contracture) of 10 degrees, 4 degrees of varus deformity and 14 degrees of valgus deformity to Table 17-10 equals a 20 percent impairment for each of these range of motion impairments.

Dr. Dambrogio found a seven percent impairment for gait derangement, according to Table 17-5 at page 529. He found a four percent impairment for a partial medial and lateral meniscectomy, according to Table 17-33 at page 546 (diagnosis-based estimate). However, the A.M.A., *Guides* cross-usage chart, Table 17-2 at page 526, precludes the combination of range of motion impairment with gait derangement or a diagnosis-based estimate. As noted, an impairment rating should be based on the rating method which yields the greater percentage of impairment. As described above, appellant has a greater percentage of impairment due to loss of range of motion than for gait derangement or diagnosis based estimate. Therefore, the range of motion impairment rating method should be applied to appellant's schedule award claim.

Regarding impairment due to pain, Dr. Dambrogio did not support, with medical rationale, his calculation of a four percent impairment based on Chapter 18 of the A.M.A., *Guides*. Section 18.3b of Chapter 18 at page 571 of the fifth edition of the A.M.A., *Guides* provides that "Examiners should not use this chapter to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters of the [A.M.A.,] *Guides*."[25] Dr. Dambrogio did not explain why appellant's pain-related impairment could not be adequately addressed by applying Chapter 17 of the A.M.A., *Guides* which addresses lower extremity impairment, specifically section 17.2l, "Peripheral Nerve Injuries" which states that, "[p]artial sensory and motor deficits should be rated as in the upper extremity (Tables 16-10 and 16-11)." Table 16-10 explains the correct method for calculating impairment due to sensory deficits or pain resulting from peripheral nerve disorders. Dr. Dambrogio did not explain why application of Chapter 17 was not adequate to calculate appellant's impairment due to lower extremity pain, justifying application of Chapter 18 of the A.M.A., *Guides*. In turn, Dr. Berman incorporated the pain rating under Chapter 18 (but found a two percent impairment rather than the four percent found by Dr. Dambrogio)

[24] The A.M.A, *Guides* provides that range of motion restrictions in multiple directions increase the impairment and should be added to determine the total joint range of motion impairment. A.M.A., *Guides* 533, 17.2f "Range of Motion."

[25] *See also* A.M.A., *Guides* at page 571; Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 Exhibit 4 (June 2003).

without providing an explanation of the policies incorporated in FECA Bulletin No. 01-05. The Board finds that further development of the medical evidence is required regarding appellant's impairment due to sensory loss or pain.[26]

On remand, the Office should refer appellant, together with the case record and statement of accepted facts, to an appropriate Board-certified specialist for an impairment evaluation based on correct application of the A.M.A., *Guides,* fifth edition. After such further development as it deems necessary, the Office shall issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical evidence is required.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 17, 2006 is set aside and the case is remanded for further development consistent with this decision.

Issued: January 30, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[26] An impairment rating may include impairment based on range of motion and peripheral nerve injury. A.M.A, *Guides* at 526, Table 17-2; *see also* the text at 552 which states, "Estimates for peripheral nerve impairments may be combined with those for other types of lower extremity impairments, except those for muscle weakness, atrophy, and gait derangement, using the Combined Values Chart (page 604). See cross-usage Table 17-2."