United States Department of Labor
Employees' Compensation Appeals Board

N.M., Appellant	)	
and	)	**Docket No. 06-2054**
	)	**Issued: January 12, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Springfield, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 6, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 1, 2006 merit decision denying her claim for schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.[1]

ISSUE

The issue is whether appellant met her burden of proof to establish that she was entitled to schedule award compensation due to her employment injury.

[1] The record also contains an August 24, 2006 Office decision regarding a recurrence of disability claim. Appellant has not appealed this decision to the Board and the matter is not currently before the Board.

FACTUAL HISTORY

On May 17, 2000 appellant, then a 46-year-old letter carrier, filed an occupational disease claim alleging that she sustained stress-related urinary incontinence and menorrhagia due to engaging in heavy lifting at work. She stopped work on May 11, 2000.

On May 12, 2000 appellant underwent a total abdominal hysterectomy, bilateral salpingectomy, retropubic urethropexy and a uterosacral ligament vaginal vault suspension for treatment of menorrhagia and urinary stress incontinence.

Appellant submitted a June 26, 2000 report in which Dr. Jon Weisbaum, an attending osteopath, stated that her work activities "played some role in the development of her incontinence problem over the years but that vaginal child bearing certainly played a major role in the etiology of her dysfunction."[2] In a February 13, 2001 report, Dr. David B. Dunn, an attending Board-certified family practitioner, stated that there was a high probability that appellant's lifting at work was the cause of her urinary stress incontinence.

The Office accepted that appellant sustained employment-related aggravation of urinary stress incontinence and paid her appropriate compensation. It found that she was entitled to reimbursement for that portion of her May 12, 2000 surgery, which was related to her urinary stress incontinence.

On May 14, 2002 appellant requested a schedule award due to her accepted employment injury.

In a September 22, 2004 report, Dr. Dunn responded to several questions posed by the Office regarding appellant's impairment. He indicated that appellant reached maximum medical improvement in about November 2000 with respect to her urinary stress incontinence. Such actions, as walking up and down stairs and sneezing could lead to urinary stress incontinence incidents. Dr. Dunn noted that appellant had a problem with decreased sensation in the skin of the surgical area and a 300 square centimeter area across the abdomen and also had a decreased sensation of bladder fullness which could lead to more urinary stress incontinence. He indicated that she had a fluttering discomfort which was about 4/10 pain with normal everyday activities and 7-8/10 pain when she had urinary tract infection or inflammation. Dr. Dunn stated that when appellant had a urinary tract inflection she would only be able to carry 15 pounds. He indicated that she had a decreased ability to urinate with a 25 decrease in her ability to void her bladder and that a 50 percent permanent decrease in function of her pelvic wall muscles after her surgery.

In a report dated February 25, 2005, Dr. Erik Berkson, a Board-certified internist, who served as an Office medical consultant, discussed Dr. Dunn's assessment of appellant's urinary stress incontinence. He indicated that a schedule award could be granted for the extremities but not for the axial skeleton or whole person. While appellant had impairment of activities of daily living, she did not have symptoms in her upper or lower extremities which caused impairment. Dr. Berkson noted that if he was "forced to provide some quantification of bladder dysfunction" that appellant would fit a Class 3 impairment of the urethra under Table 7-4 of the American

[2] Appellant returned to limited-duty work for the employing establishment in late June 2000.

Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) and thus would have a 25 percent whole person impairment. He indicated that appellant's date of maximum medical impairment was November 12, 2000, the date that her condition leveled out after surgery.

By decision dated March 18, 2005, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she had impairment to a schedule member due to her employment injury.

Appellant submitted an October 3, 2005 report from Dr. Dunn, who stated that she had pelvic wall relaxation, which was in large part "due to years of letter carrying in its own right apart from the surgery." He noted that appellant also had pelvic wall muscle impingement of nerves that went to the medial thighs and stated:

> "These go down to the inner areas of both the left and right thighs but do not go to the level of the knee or below. They are worse on the right side than the left. She has this 90 percent of her day. The discomfort and pain is better when she is off of her feet and worsens with activities and in particular when she carries a heavy mail sack…. I believe her right leg medial thigh discomfort is because she is right leg dominant and depends more on her right side and pushes off from that side."

In a December 13, 2005 report, Dr. Dunn stated that appellant had scarring from her bladder surgery and now had very little sense of bladder fullness which led to urinary incontinence. She denied any focal numbness or weakness in the legs and did not associate any worsening pain with a full bladder. In a March 10, 2006 report, Dr. Dunn provided an assessment of appellant's condition which was similar to that contained in his September 22, 2004 and October 3, 2005 reports. He referred appellant to Dr. Charles R. Davies, a Board-certified neurologist, who obtained electromyogram (EMG) and computerized tomography scan testing. Dr. Dunn stated that he agreed with Dr. Davies' assessment that the pain appellant experienced within her inner thighs with activity was the result of pressure and stretching of the branches of the nerves going into the pelvic floor caused by scar tissues from her surgery and the pelvic floor muscle weakening. Dr. Dunn indicated that he expected this to be permanent.

In a report dated February 27, 2006, Dr. Davies stated that appellant's recent EMG testing results indicated no damage to the nerves extending down the right leg, including the femoral nerve and tibial nerve and stated that the nerves in her low back coming from the spinal cord appear normal. He stated: "I believe that the pains you are experiencing within your inner thighs with activity are the result of pressure and stretching of branches of nerves going into the pelvic floor caused by scar tissue from your surgeries and pelvic floor muscle weakening."

Appellant requested a hearing before an Office hearing representative regarding her claim. At the March 29, 2006 hearing, she claimed that pain from her employment injury caused impairment in her legs.

By decision dated and finalized on June 1, 2006, the Office hearing representative affirmed the Office's March 18, 2005 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulation[4] 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.[5]

A claimant may be entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the neck, shoulders or spine.[6] A schedule award is not payable for an impairment of the whole person[7] and the bowel or bladder is not a scheduled member under the Act.[8]

Before the A.M.A., *Guides* may be utilized the record must contain medical evidence describing the claimant's alleged permanent impairment. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation must include "a detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member of function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent description of the impairment." This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.[9]

ANALYSIS

The Office accepted that appellant sustained employment-related aggravation of urinary stress incontinence. She later claimed that she was entitled to schedule award compensation due to this injury. The Board finds that appellant did not submit sufficient medical evidence to establish that she was entitled to schedule award compensation due to her employment injury.

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[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (2006).

[5] *Id*.

[6] *Thomas J. Engelhart*, 50 ECAB 319, 320-21 (1999).

[7] *See Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

[8] *John Yera*, 48 ECAB 243, 247 (1996).

[9] Federal (FECA) Procedure Manual, Part -- 2 Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6 (March 1995). *See John H. Smith*, 41 ECAB 444, 448 (1990); *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

The Office properly determined that the medical evidence showed that appellant did not have employment-related permanent impairment which would entitle her to a schedule award. It correctly relied on the February 25, 2005 report of Dr. Berkson, a Board-certified internist serving as an Office medical consultant. He determined that she was not entitled to a schedule award. Appellant would not be entitled to a schedule award for impairment of the bladder itself, but would be entitled to such compensation if it could be shown under the relevant standards of the A.M.A., *Guides* that she had permanent impairment of the lower extremities which extended from her bladder area.[10] Dr. Dunn properly found that the medical evidence did not clearly show that appellant had permanent impairment of her lower extremities which extended from her bladder area. Dr. Berkson noted that if he was "forced to provide some quantification of bladder dysfunction" that appellant would fit a Class 3 impairment of the urethra under Table 7-4 of the A.M.A., *Guides* (5th ed. 2001) and thus would have a 25 percent whole person impairment.[11] However, as Dr. Berkson acknowledged, such a calculation would constitute an academic exercise as no schedule award is payable under the Act for the whole person.[12]

None of the reports of appellant's attending physicians contained an opinion on appellant's permanent impairment as derived under the standards of the A.M.A., *Guides*, nor is it possible to determine from the findings contained in these reports that appellant is entitled to a schedule award. Appellant alleged that the reports show that she had impairment of the lower extremities due to pain which extended from the bladder and pelvic area. However, a review of this evidence shows that such a medical process is not sufficiently well described to allow for a schedule award. As noted, the description of a given impairment must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.[13]

In October 3, 2005 and March 10, 2006 reports, Dr. Dunn, an attending Board-certified family practitioner, stated that appellant had pelvic wall relaxation which was in large part "due to years of letter carrying in its own right apart from the surgery."[14] He noted that appellant also had pelvic wall muscle impingement of nerves that went to the inner areas of both thighs but did not go to the level of the knee or below. In a report dated February 27, 2006, Dr. Davies, an attending Board-certified neurologist, stated: "I believe that the pains you are experiencing within your inner thighs with activity are the result of pressure and stretching of branches of nerves going into the pelvic floor caused by scar tissue from your surgeries and pelvic floor muscle weakening." Dr. Dunn indicated that he agreed with the assessment contained in Dr. Davies' February 27, 2006 report.

[10] *See supra* notes 6 and 8 and accompanying text.

[11] *See* A.M.A., *Guides* 153, Table 7-4.

[12] *See supra* note 7 and accompanying text.

[13] *See supra* note 9 and accompanying text.

[14] Appellant underwent surgery on May 12, 2000 which was partially designed to address her incontinence problems.

However, neither Dr. Dunn nor Dr. Davies sufficiently described appellant's medical condition in sufficient detail to allow for calculation of a schedule award under the standards of the A.M.A., *Guides*.[15] For example, they did not identify diagnostic testing showing the extent of appellant's scar tissue or explain the process how such scar tissue could cause pain which radiated into nerves extending into the lower extremities. The physicians did not identify the specific affected nerves extending into the lower extremities or attempt to quantify the extent of appellant's pain. Such explanation is particularly necessary as Dr. Davies had indicated that appellant's recent EMG testing results showed no damage to the nerves extending down the right leg, including the femoral and tibial nerves and noted that the nerves in appellant's low back coming from the spinal cord appeared normal.

For these reasons, the medical evidence submitted by appellant does not show that she was entitled to schedule award compensation.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she was entitled to schedule award compensation due to her employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 1, 2006 decision is affirmed.

Issued: January 12, 2007
Washington, DC

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

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

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

[15] General reference should be made to Chapter 17 of the A.M.A., *Guides* for assessment of lower extremity impairment, including peripheral nerve impairment.