United States Department of Labor
Employees' Compensation Appeals Board

E.C., Appellant	)	
and	)	**Docket No. 07-128**
	)	**Issued: March 27, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer	)	

Appearances:
Thomas R. Uliase, 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 October 18, 2006 appellant timely appealed the May 5, 2006 merit decision of the Office of Workers' Compensation Programs which affirmed a schedule award for permanent impairment of the left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the schedule award.

ISSUE

The issue is whether appellant has more than 11 percent permanent impairment of the left lower extremity.

FACTUAL HISTORY

Appellant, a 40-year-old mail handler, has an accepted claim for lumbosacral sprain and lumbar disc displacement (L5-S1), which arose on March 24, 2002. He underwent an Office-approved microdiscectomy on May 31, 2002. Appellant resumed his full-time regular duties on September 21, 2002. On May 9, 2003 he filed a claim for a schedule award.

In a February 25, 2003 report, Dr. David Weiss, a Board-certified orthopedist, found that appellant had 16 percent permanent impairment of the left lower extremity. The overall rating included separate components for pain (three percent), calf muscle atrophy (eight percent) and muscle weakness (hip flexion five percent). Dr. Weiss indicated that appellant reached maximum medical improvement on February 25, 2003.

The Office's district medical adviser reviewed the record and on November 19, 2003 he concluded that appellant had 11 percent permanent impairment of the left lower extremity. He agreed with Dr. Weiss with respect to appellant's impairment due to pain (three percent) and decreased left hip flexion (five percent). Regarding calf muscle atrophy, the district medical adviser disagreed with Dr. Weiss' 8 percent rating and assigned only 3 percent impairment for a combined left lower extremity impairment of 11 percent.

On November 25, 2003 the Office granted a schedule award for 11 percent impairment of the right lower extremity.[1] However, a hearing representative set aside the decision on October 18, 2004 and remanded the case for the Office to obtain an explanation from the district medical adviser for reducing the impairment for left calf muscle atrophy from eight to three percent.[2]

In a February 17, 2005 report, the district medical adviser explained that Table 17-6 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* 530, provided a range of impairment of 3 to 8 percent, which corresponded to a difference in calf circumference of 1 to 1.9 centimeters. Because Dr. Weiss reported only a one centimeter difference between appellant's left and right calf muscles which was on the low end of the range, appellant had only three percent impairment. The district medical adviser further explained that, if Dr. Weiss reported a 1.9 centimeters difference, then appellant would have been entitled to an 8 percent impairment rating under Table 17-6.

On February 24, 2005 the Office issued a decision finding that appellant was not entitled to additional impairment for calf muscle atrophy. The Office hearing representative affirmed the decision on May 5, 2006 finding that appellant did not have more than 11 percent impairment of the left lower extremity.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[3] The Act, however, does not specify the manner by which the

[1] The award covered the period February 25 to October 4, 2003. Although the decision indicated entitlement to 28.8 weeks' compensation which corresponds to 10 percent impairment, the Office paid appellant for 31.68 weeks (221.76 days).

[2] The hearing representative also clarified that the schedule award was for impairment of the left lower extremity, not the right lower extremity as indicated in the November 25, 2003 decision.

[3] The Act provides that for a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2) (2000).

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 implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[4] Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).[5]

ANALYSIS

The district medical adviser and Dr. Weiss agreed that appellant had five percent impairment for muscle weakness due to decreased left hip flexion (Grade 4) under Table 17-8, A.M.A., *Guides* 532, but they differed on the extent of impairment attributable to the one centimeter difference in circumference between appellant's left and right calf muscles. Table 17-6, of the A.M.A., *Guides* 530, measures impairment due to unilateral leg muscle atrophy. With respect to the calf muscle, a difference of 1 to 1.9 centimeters is considered a mild impairment which corresponds to a lower extremity impairment range of 3 to 8 percent. Although appellant had only a one centimeter difference, Dr. Weiss assessed the highest possible impairment rating of eight percent. The district medical adviser assigned three percent impairment because this rating was more consistent with a one centimeter difference in circumference. He explained that, if Dr. Weiss had reported a 1.9 centimeters difference, then appellant would have been entitled to an 8 percent impairment rating. The district medical adviser's three percent impairment rating for calf muscle atrophy is reasonable and it conforms to the A.M.A., *Guides* (5th ed. 2001). As such, his finding regarding impairment due to calf muscle atrophy constitutes the weight of the medical evidence.[6]

Dr. Weiss and the district medical adviser agreed that an additional three percent impairment was justified due to pain. The A.M.A., *Guides* limit the circumstances under which a pain-related impairment may be assessed under Chapter 18. If an impairment can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*, such as Chapters 13, 16 and 17, then pain-related impairments should not be assessed using Chapter 18.[7] The A.M.A., *Guides* provide for an incremental adjustment of up to three percent for pain when the conventional rating system does not adequately encompass the burden of the individuals condition. Where the pain-related impairment appears to increase the burden of the individual's condition "slightly," the physician can increase the percentage found under the conventional rating system by up to three percent.[8]

In this instance neither the district medical adviser nor Dr. Weiss explained why the conventional impairment rating provided under Chapter 17 was ostensibly inadequate. In the absence of a valid explanation for utilizing Chapter 18, the Office should not have awarded an

[4] 20 C.F.R. § 10.404 (2006).

[5] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

[6] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

[7] Section 18.3b, A.M.A., *Guides* 571.

[8] Section 18.3d, A.M.A., *Guides* 573; Figure 18-1, A.M.A., *Guides* 574.

additional three percent impairment for pain.[9] On remand, the Office should obtain clarification from either Dr. Weiss or the district medical adviser why the impairment ratings assigned under Tables 17-6 and 17-8 do not adequately encompass the burden of appellant's condition. Accordingly, the May 5, 2006 decision is set aside and the case will be remanded to the Office for further development of the medical evidence as appropriate. The Office should then issue a *de novo* decision regarding appellant's entitlement to a schedule award.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: March 27, 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

[9] *See Mark A. Holloway*, 55 ECAB 321, 326 (2004); *Philip A. Norulak*, 55 ECAB 690, 696 (2004).