United States Department of Labor
Employees' Compensation Appeals Board

P.G., Appellant	)	
and	)	**Docket No. 10-2080**
	)	**Issued: May 5, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2010 appellant filed a timely appeal from a July 8, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 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 entitlement to an additional schedule award for the left leg.

FACTUAL HISTORY

On January 3, 2005 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 30, 2004 he sustained a left foot and ankle injury

[1] 5 U.S.C. § 8101 *et seq.*

when he slipped on ice while in the performance of duty. The Office accepted the claim for a left ankle sprain on February 17, 2005.[2] Appellant returned to work in a light-duty position.

In a report dated March 28, 2006, Dr. Timothy Morley, an osteopath, provided a history and results on examination. He opined that appellant had a 14 percent left leg permanent impairment due to loss of left ankle range of motion. An Office medical adviser concurred that appellant had a 14 percent left leg impairment in a June 5, 2006 report.

By decision dated July 21, 2006, the Office issued a schedule award for a 14 percent permanent impairment to the left leg. The period of the award was 40.32 weeks commencing March 28, 2006.

On August 24, 2009 appellant submitted a claim for compensation (Form CA-7) dated August 18, 2009, checking a box for a schedule award. He submitted a report dated September 4, 2009 from Dr. William Grant, an internist, who provided a history and results on examination. Dr. Grant noted left ankle swelling, mild atrophy, reduced range of motion and diffuse weakness about the ankle and foot. He opined that, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter referred to as the A.M.A., *Guides*), appellant had a 26 percent left leg impairment. Dr. Grant referred to the foot and ankle regional grid (Table 16-2) and found a default value of 30 percent was adjusted to 26 percent.

In a report dated November 15, 2009, an Office medical adviser reviewed the evidence and opined that, under Table 16-2, the appropriate default impairment was 10 percent, for peroneal tendinitis with moderate motion deficits and/or significant weakness. This impairment was adjusted to eight percent based on functional history and clinical studies. The medical adviser also found one percent impairment under Table 16-2 for joint instability and ligamentous laxity, with no adjustment.

The Office determined that a conflict existed under 5 U.S.C. § 8123(a) and appellant was referred to Dr. Alan Wilde, a Board-certified orthopedic surgeon selected as a referee examiner. In a report dated February 2, 2010, Dr. Wilde provided a history and results on examination. With respect to permanent impairment, he stated that he agreed with the Office medical adviser, who followed the A.M.A., *Guides*. Dr. Wilde stated that for a Class 1, Grade C peroneal tendinitis the impairment was seven percent. He also found that, for ankle joint instability, ligamentous laxity with no clinical instability, the impairment was one percent for Class 1. Dr. Wilde indicated that physical examination was used for the diagnosis, that functional history did not require a modifier as appellant did not have a limp. He noted the clinical studies, including x-rays and magnetic resonance imaging (MRI) scan and stated that they did not have an impact on the impairment. Dr. Wilde concluded that appellant had an eight percent left leg permanent impairment. The Office referred the case to an Office medical adviser, who opined in a February 25, 2010 report that appellant had a nine percent left leg impairment.

[2] Appellant had a prior claim (File No. xxxxxx183) that was accepted for left ankle and foot sprain. Pursuant to this claim, he received a schedule award for a four percent permanent left leg impairment on July 26, 2002, and an additional five percent by decision dated December 10, 2003. The impairments were based on loss of ankle and hindfoot range of motion.

By decision dated March 3, 2010, the Office determined that appellant was not entitled to an additional schedule award for the left leg. Appellant requested a telephonic hearing before an Office hearing representative, which was held on June 1, 2010. By decision dated July 8, 2010, the hearing representative affirmed the March 3, 2010 Office decision.

LEGAL PRECEDENT

The schedule award provision of the Act and its implementing regulations[3] 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.[4] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[5] Office procedures provide that, effective May 1, 2009, all schedule awards are to be calculated under the sixth edition of the A.M.A., *Guides*.[6] Any recalculations of previous awards which result from hearings or reconsideration decisions issued on or after May 1, 2009, should be based on the sixth edition of the A.M.A., *Guides*. A claimant who has received a schedule award calculated under a previous edition and who claims an increased award, will receive a calculation according to the sixth edition for any decision issued on or after May 1, 2009.[7]

It is well established that when a case is referred to a referee specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[8]

ANALYSIS

The Office found that, a conflict existed under 5 U.S.C. § 8123(a) with respect to an additional permanent impairment to the left leg.[9] An attending physician, Dr. Grant, opined that

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[3] 20 C.F.R. § 10.404 (1999).

[4] *See Ronald R. Kraynak,* 53 ECAB 130 (2001); *August M. Buffa,* 12 ECAB 324 (1961).

[5] 20 C.F.R. § 10.404 (1999).

[6] FECA Bulletin No. 09-03 (issued March 15, 2009); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010).

[7] *Id.*

[8] *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

[9] The Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination. 5 U.S.C. § 8123(a). The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. 20 C.F.R. § 10.321 (1999).

appellant had 26 percent impairment, while an Office medical adviser opined that appellant had 9 percent impairment. At the June 1, 2010 hearing, appellant appeared to argue that because the medical adviser did not examine appellant, his report was not sufficient to create a conflict. The Office medical adviser provided a rationalized medical opinion that clearly explained how he applied Table 16-2 and the net adjustment formula to determine appellant's impairment based on the physical findings.

The referee physician, Dr. Wilde, opined that appellant had an eight percent left leg permanent impairment. Under Table 16-2, a Class 1 diagnosis (CDX) for ankle peroneal tendinitis, with moderate motion deficits and/or significant weakness, has a default impairment of 10 percent.[10] The default value is adjusted by applying the net adjustment formula, which identifies grade modifiers for functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS). If a particular criterion is used to determine the impairment class, it is not used again to determine the grade.[11] Dr. Wilde did not use physical examination grade modifier as it was used to determine the diagnosed class. He used a grade modifier of 0 for functional history, noting appellant did not have a limp, and 0 for clinical studies, noting the lack of results. Applying the formula GMFH-CDX + GMCS-CDX, the net adjustment is -2, which under Table 16-2 reduces the impairment to seven percent.[12]

Dr. Wilde also found that appellant had one percent impairment for ankle joint instability/ligamentous laxity for Class 1 impairment under Table 16-2.[13] The total impairment is therefore eight percent. The Board finds that Dr. Wilde's rationalized medical opinion represented the weight of the medical evidence. As noted above, a referee's opinion is entitled to special weight.[14] Since appellant had already received schedule awards totaling 23 percent for the left leg based on left ankle and foot impairments, the Board finds that the Office properly found he was not entitled to an additional schedule award in this case.

CONCLUSION

The Board finds the medical evidence does not establish more than a 23 percent left leg impairment and therefore appellant is not entitled to an additional schedule award.

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[10] A.M.A., *Guides* 501, Table 16-2.

[11] *Id.* at 521.

[12] *Id.* at 501, Table 16-2.

[13] The default value is one percent for Class 1. Under Table 16-2, a net adjustment of -2 would result in no impairment, but Dr. Wilde chose to give appellant the default value of one percent.

[14] The Office referred the case to an Office medical adviser for further review. When a conflict exists under 5 U.S.C. § 8123(a) and a referee physician is selected, the referee must resolve the conflict, not an Office medical adviser. *See Thomas J. Fragale,* 55 ECAB 619 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 8 and March 3, 2010 are affirmed.

Issued: May 5, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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