

¹ 5 U.S.C. § 8101 *et seq.*

condition. OWCP accepted the claim for aggravation of perianal hidradenitis suppurativa (International Classification of Diseases (ICD) No. 705.83).²

In a report dated January 26, 2009, Dr. Timothy Morley, an osteopath, provided a history and results on examination. He opined that under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) appellant had a five percent impairment to the leg due to hip flexion weakness. Dr. Morley also opined that appellant had a five percent whole person impairment due to anal disease, citing Table 6-5. The total impairment was reported as 17 percent to the lower extremity. An OWCP medical adviser submitted an April 22, 2009 report, noting the findings of Dr. Morley and concurring that the impairment was 17 percent.

Appellant submitted an August 29, 2009 report from Dr. William Grant, an internist, who provided a history and results on examination. Dr. Grant cited Table 8-2 in the sixth edition of the A.M.A., *Guides*, stating appellant had scars consistent with a 35 percent impairment under that table.³

OWCP referred the case for a second opinion evaluation. By report dated March 28, 2010, Dr. Manhal Ghanma, an orthopedic surgeon, stated that, although appellant may be awarded a whole person impairment under the A.M.A., *Guides* sixth edition for hidradenitis, there was no basis for a lower extremity award. He stated the perianal hydradenitis was localized in nature and does not affect the nerve roots or peripheral nerves of the lower extremities. Dr. Ghanma did not provide a history or results on examination.

The record indicates that OWCP referred appellant for second opinion examination by Dr. Ira Ungar. It did not ask for an opinion regarding permanent impairment, and Dr. Ungar's May 27, 2010 report did not provide an opinion on the issue.

Dr. Grant submitted a report dated April 18, 2010, again opining that appellant had a 35 percent impairment under Table 8-2. In a report dated June 24, 2010, OWCP's medical adviser noted the statement by Dr. Ghanma, and opined that Dr. Grant's report was "wrong, and unacceptable."

By decision dated August 4, 2010, OWCP found appellant was not entitled to a schedule award. It found the weight of the evidence did not establish a permanent impairment. Appellant requested a telephonic hearing before an OWCP hearing representative, which was held on November 5, 2010. By decision dated December 22, 2010, the hearing representative affirmed the August 4, 2010 OWCP decision. The hearing representative found that Dr. Ghanma represented the weight of the medical evidence.

² The record indicates that appellant also had other claims accepted for a right knee injury on December 24, 2004, carpal tunnel syndrome and a neck strain on September 22, 2008.

³ Table 8-2 provides whole person impairments for skin disorders. A.M.A., *Guides* 166.

LEGAL PRECEDENT

Section 8107 of FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁴ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁶

When OWCP refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, it should secure an appropriate report on the relevant issues.⁷

ANALYSIS

In this case, appellant had submitted an August 29, 2009 report from Dr. Grant, who found appellant had an impairment for scarring under Table 8-2.⁸ Under FECA, an impairment for skin disfigurement is limited to serious disfigurement of the face, head or neck of a character likely to handicap an individual in securing or maintaining employment.⁹ There is no provision under FECA for an impairment calculated under Table 8-2 for scarring to another part of the body.¹⁰

OWCP's hearing representative finds the Dr. Ghanma, a physician selected for a second opinion evaluation, represented the weight of the evidence. The hearing representative stated that Dr. Ghanma "examined the claimant" on March 28, 2010. If Dr. Ghanma examined appellant, he provided no evidence in his March 28, 2010 report. The report contains no findings on physical examination or any discussion of clinical findings. In addition, there is no history of injury or history of medical treatment which would serve as a foundation for Dr. Ghanma's opinion and demonstrate his understanding of the factual and medical background. OWCP also referred appellant for a second opinion examination by Dr. Ungar, however, the issue of permanent impairment was not at issue.

⁴ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁵ *A. George Lampo*, 45 ECAB 441 (1994).

⁶ FECA Bulletin No. 09-03 (March 15, 2009).

⁷ See *Robert Kirby*, 51 ECAB 474, 476 (2000); *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

⁸ A.M.A., *Guides* 166, Table 8-2.

⁹ 5 U.S.C. § 8107(c)(21). The amount of compensation is not to exceed \$3,500.00.

¹⁰ See *A.S.*, Docket No. 08-1483 (issued December 10, 2008).

Dr. Ghanma refers to the possibility of a whole person impairment under the A.M.A., *Guides*, but then states that there was no lower extremity impairment as no nerves were involved. He did not discuss any specific tables or figures, and as noted above, provided no results on examination or medical background to support his opinion. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate background are of little probative value.¹¹ The Board finds that Dr. Ghanma's report is of diminished probative value and cannot represent the weight of the evidence on the issue presented.

Since OWCP attempted to develop the medical evidence and referred the case for a second opinion evaluation, it is OWCP's responsibility to secure a medical report that adequately addresses the pending issues.¹² The case will be remanded to OWCP for additional development and a rationalized medical opinion as to an employment-related permanent impairment. After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds the report of the second opinion physician, Dr. Ghanma, does not represent the weight of the evidence and the case is remanded for additional development.

¹¹ See *Patricia M. Mitchell*, 48 ECAB 371 (1997); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

¹² *Supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 22, 2010 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: September 30, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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