United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 11-981**
	)	**Issued: January 11, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Lewiston, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 11, 2011 appellant filed a timely appeal from a February 23, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant sustained permanent impairment warranting a schedule award.

FACTUAL HISTORY

On December 11, 2007 appellant, then a 44-year-old part-time flexible clerk, filed an occupational disease claim for a back condition due to performing repetitive lifting as a clerk.

[1] 5 U.S.C. §§ 8101-8193.

OWCP initially denied her claim but, on July 28, 2008 accepted an L5-S1 herniated disc. Appellant stopped work on September 15, 2008.

On November 16, 2007 appellant underwent a magnetic resonance imaging (MRI) scan of the lumbar spine which revealed small mild right posterior paracentral L5-S1 disc herniation abutting the S1 nerve root. She came under the care of Dr. Karyn L. Woelflein, a Board-certified physiatrist, from January 2, 2008 to January 29, 2009, who diagnosed chronic low back pain, degenerative disc disease and disc herniation at L5-S1.

On May 20, 2009 appellant filed a claim for a schedule award. She submitted a May 29, 2009 report from Dr. John Pier, a Board-certified neurologist, who opined that appellant had five percent impairment of the whole person based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (fourth edition 1993) (A.M.A., *Guides*).[2] Dr. Pier did not believe the impairment rating would differ under the fifth edition of the A.M.A., *Guides*. He noted that appellant was at maximum medical improvement and would fall into a lumbosacral category 2 as her examination did not reveal significant sensory loss, motor loss or reflex changes. Appellant was also treated by Dr. Lue J. Dionne, a chiropractor. On June 19, 2009 Dr. Dionne provided an impairment rating pursuant to the fifth edition of the A.M.A., *Guides*.[3]

On October 13, 2009 OWCP requested that Dr. Pier submit a detailed report pursuant to the sixth edition of the A.M.A., *Guides*.[4] It advised Dr. Pier that schedule awards are not payable for impairment to the back; however, such awards are paid for impairment to the lower extremities based on significant pain, sensory deficit or motor impairment of the lower extremities that result from the job-related low back injury.

Appellant submitted a March 4, 2009 lumbar MRI scan which revealed a broad-based right paracentral disc bulge at L5-S1 level with contact with the S1 nerve root, mild disc desiccation and posterior disc bulging at L3-4. In an October 26, 2009 report, Dr. Pier diagnosed minimal right L5-S1 disc protrusion and radiculitis into the right lower extremity as confirmed by MRI scan. He noted findings of low back pain with right gluteal and leg pain and opined that appellant was at maximum medical improvement. Dr. Pier noted that he was not overly familiar with the sixth edition of the A.M.A., *Guides* but believed that appellant would have five percent impairment of the whole person pursuant to this edition.

In a March 12, 2010 letter, OWCP requested that appellant submit an assessment of permanent impairment under the sixth edition of the A.M.A., *Guides* as Dr. Pier had not properly used the sixth edition to rate her impairment.

Appellant submitted reports from Dr. Woelflein dated March 23 and April 2, 2010, who diagnosed chronic low back pain with radiating pain into the right lower extremity with

[2] A.M.A., *Guides* (4th ed. 1993).

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

[4] A.M.A., *Guides* (6th ed. 2008).

degenerative disc disease and a small herniated disc by MRI scan at L5-S1 abutting the S1 nerve root. On April 2, 2010 Dr. Woelflein advised that appellant had permanent impairment related to her lumbar spine; however, OWCP did not allow impairment based on a spine injury. She noted that appellant did not have a limb injury which would fall under any of the categories in the A.M.A., *Guides*. Dr. Woelflein indicated that she was not familiar enough with the sixth edition of the A.M.A., *Guides* to determine an impairment rating.

OWCP referred appellant to Dr. Lawrence Leonard, a Board-certified orthopedist, for a second opinion evaluation. In an August 10, 2010 report, Dr. Leonard reviewed appellant's history and described his findings on examination. Appellant had normal heel and toe gait while reflexes were active and equal. Muscle examination showed no significant muscle weakness in either leg and Wartenberg pinwheel and light touch tests revealed no significant hypesthesia. Dr. Leonard reported negative sitting straight leg raises and recumbent straight leg raises were normal bilaterally without sciatic symptoms. Hip examination was normal. Dr. Leonard stated that back range of motion was excellent, with some spasm detected in the lower erector spinae muscles bilaterally, while the sciatic notches were not tender to palpation. He diagnosed degenerative L5-S1 disc disease with nonverifiable right S1 sciatic, mild. Dr. Leonard noted that using Table 16-1, appellant was a class 1, mild problem with an impairment of 1 to 13 percent of the lower extremity. He noted the functional history would provide a grade modifier of 3, grade C, physical examination provided a 0 grade modifier and clinical studies provided a 0 grade modifier. Dr. Leonard noted that the pain disability questionnaire of 17-A provided a score of 106 for a grade modifier of 3, grade C. He applied these findings to Figure 16-2 and determined that appellant had three percent impairment of the right leg. Dr. Leonard noted no peripheral nerve involvement, no amputation and normal range of motion of the legs. He opined that appellant had approximately three percent impairment of the right lower extremity as best as he could determine noting that this did not reflect permanent impairment due to her degenerative disc and nonverifiable sciatica. Dr. Leonard noted that appellant reached maximum medical improvement in September 2008.

In an August 26, 2010 report, an OWCP medical adviser stated that there was no basis for rating any impairment based on appellant's accepted conditions. He referenced Dr. Leonard's rating of three percent based Table 16-1, page 495 of the A.M.A., *Guides* and noted that use of this table was inappropriate because it provided generic information but did not provide definitions to identify specific ratings per diagnoses. The medical adviser noted that it must be determined if verifiable radiculopathy was present at maximum medical improvement and if ratable impairment existed based on sensory or motor deficits. In this case Dr. Leonard had found no significant muscle weakness in either leg and no significant hypoesthesia detected. The medical adviser agreed with Dr. Leonard's diagnoses of degenerative L5-S1 disc disease with nonverifiable right S1 mild sciatica, and opined that where no verifiable radiculopathy exists there is no ratable impairment for sensory or motor deficits. He noted that Dr. Leonard found no sensory deficit in either leg and no motor weakness in the legs. The medical adviser opined that for this reason there was no ratable spinal nerve impairment in accordance with the A.M.A., *Guides*.

On September 9, 2010 OWCP denied appellant's claim for a schedule award. On September 20, 2010 appellant requested a review of the written record.

In a decision dated February 23, 2011, an OWCP hearing representative affirmed the September 9, 2010 decision.

LEGAL PRECEDENT

The schedule award provision of FECA[5] and its implementing federal regulations[6] 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, FECA 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[7] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[8] For decisions issued beginning May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.[9]

No schedule award is payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.[10] FECA and the implementing regulations do not provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole.[11] The Board notes that section 8101(19) specifically excludes the back from the definition of organ.[12] However, 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.[13]

ANALYSIS

On appeal, appellant alleges that she is entitled to a schedule award. OWCP accepted her claim for L5-S1, herniated disc. FECA does not provide for a schedule award based on impairment to the back or spine. Appellant may only be awarded a schedule award for impairment to the lower extremities if such impairment is established as being due to her accepted lumbar condition.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id.* at § 10.404(a).

[8] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[9] FECA Bulletin No. 09-03 (issued March 15, 2009).

[10] *Thomas J. Engelhart*, 50 ECAB 319 (1999).

[11] *See Jay K. Tomokiyo*, 51 ECAB 361 (2000).

[12] 5 U.S.C. § 8101(19).

[13] *Thomas J. Engelhart*, *supra* note 10.

In support of her claim, appellant submitted a May 29, 2009 report from Dr. Pier, who opined that appellant had five percent impairment of the whole person based on the fourth edition of the A.M.A., *Guides*.[14] The Board has carefully reviewed Dr. Pier's report and notes that his findings do not support permanent impairment of the upper or lower extremities. Dr. Pier noted examination did not reveal significant sensory loss, motor loss or reflex changes in the lower extremities. OWCP requested that Dr. Pier provide an impairment rating based on the sixth edition of the A.M.A., *Guides* and in an October 26, 2009 report, Dr. Pier noted that he was not overly familiar with the sixth edition of the A.M.A., *Guides* but believed that appellant would have five percent impairment of the whole person pursuant to this edition. Dr. Pier did not reference any tables or charts in the sixth edition of the A.M.A., *Guides*, and he did not attribute any impairment to a scheduled body member as a result of the accepted condition. He did not explain how appellant's lumbar condition caused impairment to either lower extremity or provide an adequate description of appellant's physical condition so that an impairment rating could be determined by an OWCP medical adviser. Similarly, on April 2, 2010, Dr. Woeflein advised that appellant did not have a limb injury which would fall under any of the categories in the A.M.A., *Guides*. She indicated that she was not familiar enough with the sixth edition of the A.M.A., *Guides* to determine an impairment rating. Neither physician explained how appellant's accepted lumbar condition caused permanent impairment to the lower extremities. These reports are of limited probative value and are insufficient to establish a basis for the payment of a schedule award.[15]

Appellant also submitted a June 19, 2009 report from Dr. Dionne, a chiropractor, who opined that she had 10 to 13 percent impairment pursuant to the fifth edition of the A.M.A., *Guides*.[16] However, the Board has held that the opinion of a chiropractor, regarding a permanent impairment of a scheduled extremity or other member of the body is beyond the scope of the statutory limitation of a chiropractor's services.[17] Dr. Dionne's reports are thus of no probative value with regards to the extent of any permanent impairment.

OWCP referred appellant to Dr. Leonard who found that appellant had three percent impairment of her right leg. Dr. Leonard noted appellant's reflexes were active and equal with no significant muscle weakness in either leg and no sensory loss or significant hypesthesia. He diagnosed degenerative L5-S1 disc disease with nonverifiable right S1 sciatic, mild. Dr. Leonard noted that using Table 16-1, appellant was a class 1, mild problem with an impairment of 1 to 13 percent of the leg. He noted that the functional history would provide a grade modifier of 3,

[14] A.M.A., *Guides* (4th ed. 1993).

[15] *See Carl J. Cleary*, 57 ECAB 563, 568 at note 14 (2006) (an opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's impairment).

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

[17] *Pamela K. Guesford* 53 ECAB 726 (2002); *see also George E. Williams*, 44 ECAB 530 (1993) (a chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation and his or her opinion is not considered competent medical evidence in evaluation of other disorders, including those of the extremities, although these disorders may originate in the spine); *see also J.B.*, Docket No. 11-405 (issued September 7, 2011); *M.E.*, Docket No. 10-2277 (issued June 13, 2011).

grade C, physical examination had a 0 grade modifier and clinical studies would have a 0 grade modifier. Dr. Leonard applied these findings to Figure 16-2 and determined that appellant had three percent right leg impairment.

In a September 7, 2010 report, an OWCP medical adviser reviewed Dr. Leonard's report and disagreed with his conclusion that appellant had three percent impairment based Table 16-1, page 495, of the A.M.A., *Guides*. The medical adviser indicated that use of Table 16-1 was inappropriate because it provided generic information but did not provide definitions to identify specific ratings per diagnoses. The Board notes that Table 16-1 notes the classes of impairment and the corresponding ranges of impairment for all diagnosis-based impairments in Chapter 16 of the A.M.A., *Guides* but does not address impairment for particular conditions.[18] As noted, Dr. Leonard found no sensory deficit or motor weakness in either extremity related to appellant's lumbar spine pathology. The medical adviser opined that because there was no sensory or motor deficits to the extremities there was no basis for rating any impairment based on appellant's accepted conditions. The medical adviser agreed with Dr. Leonard's diagnoses of degenerative L5-S1 disc disease and opined that where no verifiable radiculopathy exists there is no ratable impairment for sensory or motor deficits. The medical adviser opined that for this reason there was no ratable impairment of either leg in accordance with the A.M.A., *Guides*. The Board finds that the medical adviser properly explained why Dr. Leonard's findings did not support an impairment rating for either leg. As there is no medical evidence in conformance with the A.M.A., *Guides*, supporting ratable impairment of a scheduled body member, causally related to the accepted condition, OWCP properly denied appellant's claim for a schedule award.

On appeal, appellant asserts that Dr. Dionne provided an appropriate impairment rating after performing an examination and reviewing x-rays and that his rating should be given more weight than that of a medical adviser who did not examiner her. As noted above, an impairment rating for schedule award purposes is beyond the scope of the statutory limitation on a chiropractor's services. The Board further notes that OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the 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.[19] Here, the medical adviser considered the medical evidence and explained why there was no basis to rate impairment for the legs due to appellant's accepted condition.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

[18] Table 16-1 appears in section 16.1 of the A.M.A., *Guides*, Principles of Assessment. A.M.A., *Guides* 494-95. This section of the A.M.A., *Guides* refers the reader to section 16.3d for a detailed description of the process for calculating impairment values. Section 16.3d, page 518, directs that a diagnosis-based regional grid be used to determine impairment class with grades then determined by using adjustment grids.

[19] *See Federal* (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

CONCLUSION

The Board finds that appellant did not establish that she sustained permanent impairment of her lower extremity based on her accepted lumbar condition.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board