United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
	)	**Docket No. 12-518**
and	)	**Issued: November 6, 2012**
U.S. POSTAL SERVICE, MAIN POST OFFICE, New Orleans, LA, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 10, 2010 appellant filed a timely appeal of the June 29 and December 19, 2011 merit decisions 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 this case.

ISSUE

The issue is whether appellant is entitled to an additional schedule award for her left lower extremity impairment.

On appeal, appellant contends that a medical report of an attending physician is sufficient to establish her entitlement to an additional schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted under OWCP File No. xxxxxx053[2] that on December 9, 1999 appellant, then a 55-year-old mail processing clerk, sustained a lumbar and left knee strain and left meniscus tear and displacement meniscal fragment when she tried to move a large garbage can at work.

In a February 10, 2002 decision, OWCP granted appellant a schedule award for 36 percent impairment of the left lower extremity.

On June 8, 2008 appellant filed a claim for an additional schedule award for impairment to her left lower extremity.

By letter dated December 3, 2009, OWCP requested that Dr. Sofjan Lamid, an attending Board-certified physiatrist, provide an assessment of appellant's permanent impairment due to her work-related conditions, which should include a finding that she had reached maximum medical improvement and a description of her impairment, schedule award rating and subjective complaints causing the impairment according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a permanent impairment worksheet dated December 20, 2009, Dr. Lamid advised that appellant had 27 percent impairment of the left lower extremity due to her left hip, knee and foot strains. Regarding the left hip strain, he assigned a class 2 impairment. Dr. Lamid also assigned a grade modifier of 2 each for functional history, physical examination and clinical studies. He advised that this resulted in a grade B impairment or 10 percent impairment. Dr. Lamid assigned the same grade modifier of 2 each for functional history, physical examination and clinical studies regarding appellant's left knee and foot strains which resulted in the same grade B impairment or 10 percent impairment for each body part. He combined the 10 percent impairment ratings for the left hip, knee and foot and advised that it resulted in 27 percent impairment of the left lower extremity. Dr. Lamid then determined that appellant had 58 percent regional impairment of the extremity. He concluded that she reached maximum medical improvement on January 30, 2008.

On March 1, 2010 Dr. Ronald Blum, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, reviewed appellant's medical record, including Dr. Lamid's findings. He stated that Dr. Lamid did not provide adequate descriptions of abnormality for him to determine the extent of appellant's impairment. Dr. Blum noted that neither a hip nor foot strain had been accepted as work related. He further noted that there was no class 2 designation in the grids for a hip, knee and foot strain. Dr. Blum recommended that OWCP obtain an impairment

[2] Prior to the instant claim, OWCP accepted that on March 25, 1993 appellant sustained a work-related contusion of the head and cervical strain under OWCP File No. xxxxxx997. Subsequently, it accepted that on October 3, 1996 he sustained an employment-related contusion of the right elbow and knee under OWCP File No. xxxxxx129. On August 8, 2003 OWCP accepted that on June 12, 2003 appellant sustained a contusion of the left upper limb, arm and shoulder, and left shoulder sprain while in the performance of duty under OWCP File No. xxxxxx948. In a June 14, 2004 decision, the Board affirmed an OWCP decision dated December 22, 2003, finding that appellant failed to establish that she was entitled to wage-loss compensation for disability commencing September 13, 2003 due to her June 12, 2003 employment injuries. Docket No. 04-705 (issued June 14, 2004).

evaluation by an appropriate Board-certified specialist that included the date of maximum medical improvement, a detailed description of objective and subjective findings and an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*.

By letter dated May 28, 2010, OWCP referred appellant, together with a statement of accepted facts and the case record, to Dr. Byron T. Jeffcoat, a Board-certified orthopedic surgeon, for a second opinion. In an August 18, 2010 report, Dr. Jeffcoat noted the history of injury, a review of the medical records and his examination findings. He stated that appellant was noncooperative to his requests during the examination and falsely accused him of touching her too hard. Dr. Jeffcoat's examination was based on his observation of her during their discussion. Appellant completely refused to do anything that he asked her to do. Dr. Jeffcoat reported essentially normal findings. He stated that plain x-rays taken several days after the December 1999 employment injuries showed degenerative arthritis of the left knee. A subsequent magnetic resonance imaging (MRI) scan of the left knee demonstrated severe degenerative arthritis and degeneration of the meniscus. Lumbar spine x-rays showed a lot of facet sclerosis and degenerative changes. An MRI scan revealed spinal canal stenosis and degenerative changes throughout the lumbar spine. Based on his review of the medical records, Dr. Jeffcoat advised that appellant had degenerative arthritis in her knees and back prior to her accepted injuries. Appellant also had acromioclavicular joint degenerative changes and no evidence of a rotator cuff tear. Dr. Jeffcoat advised that appellant only suffered sprains to the lumbar spine and left knee as a result of her 1999 employment injury and that she had no residuals of these conditions. He further advised that the meniscus injury resulted from degenerative changes. Dr. Jeffcoat concluded that appellant had no additional disability or impairment as a result of the accepted December 1999 employment injuries.

On September 14, 2010 Dr. Blum reviewed Dr. Jeffcoat's findings. He advised that appellant had no impairment of either the right or left lower extremity under the sixth edition of the A.M.A., *Guides* based on Dr. Jeffcoat's finding that she had no residuals of her December 9, 1999 employment injuries.

In a decision dated September 17, 2010, OWCP denied appellant's claim for an additional schedule award, finding that the weight of the medical evidence rested with the opinions of Dr. Jeffcoat and Dr. Blum.

On September 26, 2010 appellant requested a telephone hearing with an OWCP hearing representative.

In a May 17, 2011 decision, an OWCP hearing representative set aside the September 17, 2010 decision and remanded the case to OWCP for further development of the medical evidence. He found that Dr. Jeffcoat's report was not entitled to the weight of the medical evidence. The hearing representative did not complete a thorough physical examination as he was unable to adequately examine appellant. Dr. Jeffcoat's report was not based on an accurate history of injury as he ignored her accepted meniscus tear and displacement of the left meniscus fragment of the left knee. The hearing representative found that Dr. Lamid failed to provide sufficient rationale in support of his impairment ratings. On remand, he instructed OWCP to obtain a supplemental report from Dr. Lamid containing his examination findings and explanation on how he used specific tables and pages in the A.M.A., *Guides* to arrive at his impairment rating.

By letter dated May 24, 2011, OWCP requested a supplemental report from Dr. Lamid providing an assessment of appellant's permanent impairment that included his examination findings based on the sixth edition of the A.M.A., *Guides*.

In a June 4, 2011 permanent impairment worksheet, Dr. Lamid reiterated his prior calculations and opinion that appellant had 27 percent impairment of the left lower extremity and 57 percent combined impairment of the same extremity.

In a June 29, 2011 decision, OWCP denied an additional schedule award for appellant's left lower extremity, finding that she did not submit the requested evidence.

On July 7, 2011 appellant requested a telephone hearing before an OWCP hearing representative.

In a June 7, 2011 report, Dr. Lamid noted the accepted employment injuries and appellant's complaints of moderate-to-severe continuous pain in her back and left knee and leg. Appellant also complained of weakness in her left leg. On examination of the thoracolumbar spine, Dr. Lamid reported flexion to 70 degrees with pain and spasm on the paralumbar muscle. Pain radiated to the left thigh. The left knee was swollen and appellant experienced pain on squatting with limited range of motion. She had weakness of the left leg muscles and pain in the left leg and ankle when walking. Muscle strength of the left quadriceps was 3/5. An MRI scan showed a laceration of the medial meniscus of the left knee. Dr. Lamid divided appellant's accepted left leg strain into three regions, a left hip, knee and ankle strain based on page 493 of the sixth edition of the A.M.A., *Guides*. Regarding the left hip strain, he utilized Figure 15-31 on page 480 and assigned a class 2 impairment and a grade modifier of 2 each for functional history, physical examination and clinical studies due to moderate signs and symptoms. Dr. Lamid advised that this resulted in grade B impairment or 10 percent impairment. He also assigned a class 2 impairment and grade modifier of 2 each for functional history, physical examination and clinical studies for the left knee strain due to moderate signs and symptoms which resulted in grade B impairment or 10 percent impairment. Regarding the left ankle strain, Dr. Lamid assigned a class 2 impairment and a grade modifier of 2 each for functional history, physical examination and clinical studies due to moderate signs and symptoms, resulting in grade B impairment or 10 percent impairment. Using the Combined Values Chart, he determined that appellant had 27 percent impairment of the left lower extremity. Dr. Lamid advised that, based on range of motion measurements for the left hip, appellant had five percent impairment due to 80 degrees of flexion and five percent impairment due to 15 degrees of extension under Table 16-24 on page 549 of the A.M.A., *Guides*. The left knee had 90 degrees of flexion which represented 10 percent impairment under Table 16-23 on page 549 of the A.M.A., *Guides*. The left ankle had 15 degrees of plantar flexion and 10 degrees of dorsiflexion which each represented seven percent impairment under Table 16-22 on page 549 of the A.M.A., *Guides*. Using the Combined Values Chart, Dr. Lamid determined that appellant had 30 percent impairment of the left lower extremity. He added the 27 percent impairment rating for left hip, knee and ankle strains and the 30 percent impairment rating for loss of range of motion to calculate 57 percent impairment for the left lower extremity.

On August 16, 2011 Dr. Blum reviewed Dr. Lamid's June 7, 2011 report and advised that his findings were not probative. He stated that a class 2, grade B impairment for left hip and

knee strains were not found in Table 16-4 and Table 16-3, respectively. Dr. Blum further stated that a class 2, grade B left ankle strain was not found in Table 16-2 except in specific cases involving tendinitis or rupture of specific tendons. He related that the use of range of motion measurements to determine impairment could only be used as a standalone method and only if no other method was available. Dr. Blum noted that hip and foot strains had not been accepted as work related. He concluded that Dr. Lamid's report was not adequate for him to recommend impairment in this case. Dr. Blum recommended an impairment evaluation by an appropriate Board-certified specialist that included the date of maximum medical improvement, a detailed description of objective findings and pertinent subjective findings based on the proper tables of the sixth edition of the A.M.A., *Guides*.

In a December 19, 2011 decision, an OWCP hearing representative affirmed the June 29, 2011 decision. The hearing representative found that the weight of the medical evidence rested with Dr. Blum's August 16, 2011 opinion.

LEGAL PRECEDENT

A claim for an increased schedule award may be based on new exposure.[3] Absent any new exposure to employment factors, a claim for an increased schedule award may also be based on medical evidence indicating that the progression of an employment-related condition has resulted in a greater permanent impairment than previously calculated.[4]

In determining entitlement to a schedule award, preexisting impairment to the scheduled member should be included.[5] Any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.[6]

The schedule award provision of FECA,[7] and its implementing federal regulations,[8] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[9] The A.M.A., *Guides* has been adopted by the implementing

[3] *A.A.*, 59 ECAB 726 (2008); *Tommy R. Martin*, 56 ECAB 273 (2005); *Rose V. Ford*, 55 ECAB 449 (2004).

[4] *James R. Hentz*, 56 ECAB 573 (2005); *Linda T. Brown*, 51 ECAB 115 (1999).

[5] *Carol A. Smart*, 57 ECAB 340 (2006); *Michael C. Milner*, 53 ECAB 446 (2002).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7(a)(2) (January 2010).

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] *Ausbon N. Johnson*, 50 ECAB 304 (1999).

regulations as the appropriate standard for evaluating schedule losses.[10] Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides*[11] as the appropriate edition for all awards issued after that date.[12]

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[13] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[14]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's 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.[15]

ANALYSIS

OWCP accepted that appellant sustained a lumbar and left knee strain and left meniscus tear and displacement meniscal fragment due to her December 9, 1999 employment injury. By decision dated June 8, 2008, it awarded her 36 percent permanent impairment to the left lower extremity. Appellant subsequently requested an increased award. By decisions dated June 29 and December 19, 2011, OWCP found that she was not entitled to an additional schedule award for the left lower extremity. The Board finds that appellant did not meet her burden of proof to establish that she sustained greater impairment.

On June 7, 2011 Dr. Lamid, an attending physician, opined under the sixth edition of the A.M.A., *Guides* that appellant had 57 percent impairment of the left lower extremity based on appellant's left hip, knee and ankle strains. The Board, however, notes that this impairment rating was based on conditions which have not been accepted as work related.[16] A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to her employment.[17] Dr. Lamid did not provide any medical rationale explaining how the left hip

[10] *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[11] A.M.A., *Guides* (6th ed. 2009).

[12] Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[13] A.M.A., *Guides* 494-531.

[14] *Id.* at 521.

[15] *See* Federal (FECA) Procedure Manual, *supra* note 6, Chapter 2.808.6(d) (January 2010).

[16] *See G.A.*, Docket No. 09-2153 (issued June 10, 2010) (for conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship).

[17] *Veronica Williams*, 56 ECAB 367, 370 (2005).

and ankle strains were causally related to the accepted December 9, 1999 employment injuries. The Board finds, therefore, that his report is of diminished probative value and is insufficient to establish increased permanent impairment to appellant's left lower extremity causally related to the accepted injuries.

On August 16, 2011 Dr. Blum, an OWCP medical adviser, reviewed Dr. Lamid's evaluation and opined that his findings were of diminished probative value. He explained that his impairment rating was based on the nonaccepted left hip and ankle strains. Dr. Blum stated that Dr. Lamid did not properly utilize the sixth edition of the A.M.A., *Guides* as Tables 16-4 and 16-3[18] did not provide a class 2, grade B impairment for left hip and knee strains, respectively, and Table 16-2[19] did not provide the same impairments for a left ankle sprain except in specific cases involving tendinitis or rupture of specific tendons. He noted that the use of range of motion measurements to determine impairment could only be used as a standalone method and only if no other method was available.[20] Dr. Blum concluded that Dr. Lamid's findings were not adequate for him to determine the extent of appellant's impairment. The Board finds that there is no probative medical evidence establishing that appellant has more than 36 percent impairment of her left lower extremity causally related to the December 9, 1999 accepted employment injuries. Appellant is not entitled to an increased schedule award.

On appeal, appellant contended that Dr. Lamid's report is sufficient to establish her entitlement to an additional schedule award. For the reasons noted, Dr. Lamid's report is of diminished probative value and not sufficient to represent the weight of medical opinion. Appellant can request an additional schedule award and submit probative medical evidence to OWCP on the issue at any time.

CONCLUSION

The Board finds that appellant has not established entitlement to an additional schedule award for her left lower extremity impairment.

[18] A.M.A., *Guides* 509-15.

[19] *Id.* at 501-8.

[20] *Id.* at 543, section 16.7, Range of Motion Impairment.

ORDER

IT IS HEREBY ORDERED THAT the December 19 and June 29, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 6, 2012
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