United States Department of Labor
Employees' Compensation Appeals Board

G.J., Appellant	)	
and	)	**Docket No. 15-0967**
	)	**Issued: August 13, 2015**
U.S. POSTAL SERVICE, OGLETHORPE POST OFFICE, Savannah, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 25, 2015 appellant filed a timely appeal of a December 31, 2014 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 this case.[2]

ISSUE

The issue is whether appellant has established more than 39 percent permanent impairment of the left leg, for which he previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Accompanying his request for appeal, appellant submitted additional medical evidence. The Board may not consider evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant may submit this evidence to OWCP accompanying a valid request for reconsideration.

FACTUAL HISTORY

OWCP accepted that on November 22, 1996 appellant, then a 54-year-old letter carrier, sustained a bee sting to the left lower leg. It also accepted that prescribed bed rest for this injury led to deep vessel thrombophlebitis of the left lower extremity, unspecified deep vessel thrombosis of the left leg, and postphlebitic syndrome with inflammation of the left lower extremity. These conditions caused a pulmonary embolism, requiring emergency hospitalization on February 25, 1997.[3] Appellant began outpatient anticoagulation therapy in March 1997. He retired from the employing establishment, and worked a series of clerical and administrative jobs in the private sector. Appellant also received wage-loss compensation on the periodic rolls.

Dr. Robert C. Rollings, an attending Board-certified internist specializing in cardiovascular disease, followed appellant for residual postphlebitic syndrome. He provided periodic reports and venous Doppler studies through January 2001 diagnosing subacute deep venous thrombi (DVTs) in the left calf at the common femoral, superficial femoral, peroneal, and popliteal veins.

On June 18, 2001 appellant filed a claim for an increased schedule award. In a July 16, 2001 report, Dr. Rollings opined that according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*) then in effect, appellant had 50 percent impairment of the left lower extremity due to postphlebitic syndrome with chronic DVTs. On November 30, 2001 he found a class 3 peripheral vascular impairment of the left lower extremity, due to complications of a life-threatening pulmonary embolism, demonstrated involvement of the superficial femoral, popliteal and perineal veins, and chronic deep venous thrombosis and postphlebitic syndrome requiring lifelong anticoagulation. Appellant also had edema of the left leg only partially controlled with elastic hosiery.

In a December 20, 2001 report, an OWCP medical adviser reviewed Dr. Rollings' impairment rating and opined that appellant had 39 percent impairment of the left leg due to peripheral vascular disease, according to the tables and grading schemes of the fifth edition of the A.M.A., *Guides*.

By decision dated February 22, 2002, OWCP issued appellant a schedule award for 39 percent permanent impairment of the left lower extremity. The period of the award ran from January 18, 2001 to March 15, 2003.

Dr. Rollings continued to follow appellant through 2007 for stable postphlebitic syndrome of the lower extremities requiring continued anticoagulation therapy and venous duplex studies. Appellant was hospitalized on September 22, 2013 for anticoagulation therapy to address a DVT in the proximal superficial femoral and distal popliteal veins.

[3] In a January 20, 1998 letter, Dr. Anthony M. Sussman, a Board-certified vascular surgeon and second opinion physician, explained that the bee sting and bed rest caused a deep venous thrombosis, leading to the pulmonary embolism. He explained that, if appellant "had not suffered the bee sting then, he would not have been off his feet and would not have developed the deep venous thrombosis followed by the pulmonary embolism." Dr. Sussman recommended that appellant be limited permanently to sedentary work.

On May 1, 2014 appellant claimed a schedule award. He submitted a May 1, 2014 impairment rating from Dr. Rollings, opining that according to Table 4-12, pages 68 and 69 of the sixth edition of the A.M.A., *Guides*,[4] appellant had a class IV-E or 65 percent Class of Diagnosis (CDX) impairment of the left lower extremity due to postphlebitic syndrome/chronic DVT, complicated by recurrent pulmonary embolism, vascular damage, and severely abnormal venous duplex studies.

On May 13, 2014 the medical adviser reviewed Dr. Rollings' impairment rating. He found that appellant had reached maximum medical improvement as of May 1, 2014. The medical adviser disagreed with Dr. Rollings' rating methodology. He found that according to Table 4-12, a class 1 quadriceps impairment equaled six percent impairment of the left leg. Appellant did not have a higher class of impairment as there was no vascular damage to the left leg, such as from a healed amputation or vascular disease with amputation of two or more toes. The medical adviser found a grade modifier for Functional History (GMFH), grade modifier for findings on Physical Examination (GMPE), and a grade modifier for Clinical Studies (GMCS) of 1. Applying the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (1-1) + (1-1) + (1-1), resulted in a net adjustment of zero, leaving the final impairment rating at six percent of the left lower extremity.[5]

In a September 11, 2014 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including an impairment rating from his attending physician according to the sixth edition of the A.M.A., *Guides*. Appellant was afforded 30 days to submit such evidence. In response, he submitted an October 3, 2014 report of Dr. Larry Horesh, an attending Board-certified diagnostic radiologist, who opined that a venous duplex study showed postphlebitic syndrome complicated by a history of left leg DVT with duplex stigmata of chronic left femoral DVT and reflux, clinical left distal calf claudication, and possible arterial pathology.

By decision dated December 31, 2014, OWCP denied appellant's claim for an increased schedule award, finding that the six percent impairment found by the medical adviser on review of Dr. Rollings' report was less than the 39 percent previously awarded.

LEGAL PRECEDENT

The schedule award provisions of FECA[6] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. It, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of

[4] According to Table 4-12, pp. 68-69 of the A.M.A., *Guides*, "Criteria for Rating Impairment due to Peripheral Vascular Disease -- Lower Extremity; Lower Extremity Peripheral Vascular Disease," class 4 rating equals a 45 to 65 percent impairment of the lower extremity, characterized by vascular damage and severely abnormal findings on arterial or venous duplex studies.

[5] In a May 14, 2014 addendum, the medical adviser opined that there was no applicable schedule award for cardiac or pulmonary impairment.

[6] 5 U.S.C. § 8107.

tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[7] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.[8]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[9] Under the sixth edition, in addressing lower extremity impairments, the evaluator identifies the impairment class for the class of diagnosis, which is then adjusted by grade modifiers based on functional history, physical examination, and clinical studies.[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

The lower extremity chapter of the A.M.A., *Guides* states that vascular conditions are rated in accordance with section 4.8 of the A.M.A., *Guides Vascular Diseases Affecting the Extremities*, and may be combined with diagnosis-based impairments using the Combined Values Chart.[11]

Section 9.6 thrombotic disorders states that impairment is based on both the thrombotic disorder itself and the impact of the thrombosis that has occurred on a particular affected body system. This includes the degree of injury to the end organ, such as the lungs, heart, brain, kidney, and extremities from thrombosis and on how the disorder affects the individual's capacity to perform the activities of daily living.[12] The A.M.A., *Guides* state, "Regardless of the system involved, the rating that results due to the sequelae of thrombotic disease should be combined with the impairment from the thrombotic disease itself (to which is added five percent for the use of anticoagulants, if appropriate, before combining) using the Combined Values Chart in the Appendix."[13]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.[14]

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[7] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[9] A.M.A., *Guides*, 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement" (6th ed. 2008).

[10] *Id*. at 494-531 (6th ed. 2008).

[11] *Id*. at 497. *See also F.B.*, Docket No. 13-1755 (issued January 9, 2014).

[12] *Id*. at 206-08, section 9.6 thrombotic disorders.

[13] *Id.* at 207, section 9.6c.

[14] *Tommy R. Martin*, 56 ECAB 273 (2005).

ANALYSIS

OWCP accepted appellant's claim for deep vessel thrombophlebitis, unspecified deep vessel thrombosis, and postphlebitic syndrome with inflammation of the left lower extremity.

By decision dated February 22, 2002, OWCP granted appellant a schedule award for 39 percent permanent impairment of the left leg. On May 1, 2014 appellant filed a claim for an increased schedule award. In support of his claim, he submitted a May 1, 2014 impairment rating from Dr. Rollings, an attending Board-certified internist specializing in cardiovascular disease, opining that according to Table 4-12 of the sixth edition of the A.M.A., *Guides*, appellant had a class IV-E or 65 percent impairment class of diagnosis of the left lower extremity due to chronic DVT, complicated by recurrent pulmonary embolism, vascular damage, and severely abnormal venous duplex studies. Appellant also provided an October 3, 2014 venous duplex study which did not address the issue of permanent impairment.

The medical adviser reviewed Dr. Rollings' impairment rating on May 13, 2014 and asserted that Dr. Rollings had misapplied the A.M.A., *Guides*, as appellant did not have vascular damage due to amputation or from vascular disease requiring amputation of two or more toes. He opined that appellant had a class 1 quadriceps impairment, equaling six percent impairment of the left leg. The medical adviser found grade modifiers of 1 in all categories, resulting in no net adjustment of the default CDX.

The Board finds that the medical adviser properly applied the sixth edition of the A.M.A., *Guides* to rate impairment to appellant's left lower extremity. The medical adviser reviewed the medical evidence and determined that appellant had no more than six percent impairment for the left leg, which was less than the 39 percent previously awarded. OWCP properly accorded his assessment the weight of medical opinion. Appellant did not submit medical evidence conforming to the A.M.A., *Guides* that established greater impairment. Therefore, OWCP's December 31, 2014 decision was proper under the law and facts of the case.

On appeal, appellant asserts that he is entitled to greater than the 39 percent impairment previously awarded as Dr. Rollings found a 50 or 65 percent impairment. He asserts that he is totally disabled for work and has difficulty walking. Appellant requests that OWCP grant him an increased schedule award for the six percent impairment of the left lower extremity as found by the medical adviser. As stated above, Dr. Rollings' opinion was insufficient to warrant an additional percentage of impairment beyond the 39 percent previously awarded. The 6 percent impairment as found by the medical adviser was not in addition to the 39 percent awarded.

CONCLUSION

The Board finds that appellant has not established more than 39 percent impairment of the left lower extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 31, 2014 is affirmed.

Issued: August 13, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board