United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 07-1651**
	)	**Issued: December 7, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Hinesville, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 6, 2007 appellant filed a timely appeal from the April 10, 2007 decision of the Office of Workers' Compensation Programs denying modification of the Office hearing representative's November 15, 2006 decision, which affirmed appellant's schedule award. On July 21, 2006 the Office awarded him a seven percent impairment of his left lower extremity. Pursuant to 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 that he has more than seven percent impairment of his left lower extremity, for which he received a schedule award.

FACTUAL HISTORY

On May 6, 2005 appellant, then a 40-year-old letter carrier, filed an occupational disease claim, Form CA-2, alleging that he developed tendinitis in his left foot and ankle as a result of the standing and walking required by his federal employment. On May 24, 2005 Dr. Leonard

Talarico, a podiatrist, conducted a tarsal tunnel release and neurolysis of the peroneal branch of the sciatic nerve and the medical and lateral plantar nerves in appellant's left foot. On May 27, 2005 the Office accepted appellant's claim for left tarsal tunnel syndrome.

On August 26, 2005 appellant filed a claim for a schedule award. In support of his claim, he submitted the August 10, 2005 report of Dr. Douglas Hein, a Board-certified orthopedic surgeon, who stated that appellant continued to have persistent pain in his left foot. Dr. Hein reported that appellant underwent neurolysis of the posterior tibial and common perineal and plantar nerves, but noted that he was unsure whether the plantar nerves had been fully released because the surgical incision did not go very far. He stated that appellant's current symptoms were at the posterior tibial tendon, where he had magnetic resonance imaging scan documentation of peritendinous fluid, but no tendon breakdown. Dr. Hein diagnosed mild posterior tibial tendinitis and recommended left-foot arch support and limitations on standing. On August 15, 2005 Dr. Talarico submitted an attending physician's report diagnosing tarsal tunnel syndrome and posterior tibial tendinitis in the lower left extremity. He limited appellant to one to two hours of standing and walking per day.

Appellant retired from the employing establishment on November 19, 2005. On March 28, 2006 the Office informed appellant of the evidentiary requirements for establishing a schedule award.

On May 17, 2006 Dr. Hein submitted another report in support of appellant's schedule award claim. He stated that appellant developed tarsal tunnel syndrome as a result of protracted standing and that he continued to experience dysesthesia and some numbness of the medial plantar and great toe of the left foot. On examination Dr. Hein found healed incisions at the medial aspect of the left foot and the left knee. He noted that appellant had a normal gait with symmetrically decreased motion in his feet, which did not appear to be traumatically induced. Dr. Hein stated that appellant had partial hypesthesia in the distribution of the medial plantar nerve on the left foot. He found no significant weakness in the left foot. Dr. Hein opined that appellant's symptoms indicated a Grade 4 sensory deficit that rated 25 percent impairment, leading to a whole person impairment of one percent. He stated that appellant's dysesthesia indicated a whole person impairment of two percent. Dr. Hein therefore rated appellant's total tarsal tunnel syndrome-related impairment as three percent of the whole person. He provided no rating for motion deficits or weakness. Dr. Hein stated that appellant's current left foot condition was a permanent residual of his tarsal tunnel syndrome and release surgery.

On June 6, 2006 the Office provided Dr. Hein's report to an Office medical adviser, Dr. James Dyer, for a schedule award determination. Dr. Dyer stated that appellant had tarsal tunnel syndrome with a surgical release of the left tarsal tunnel is May 2005. He found that appellant had residuals of hypesthesia in the medial plantar nerve distribution of the left foot, but no weakness. Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed., 2001), Table 17-37, page 552, Dr. Dyer found an impairment of five percent of the left lower extremity or seven percent of the left foot.

By decision dated July 21, 2006, the Office granted appellant a schedule award for the seven percent impairment of his left foot in accordance with Dr. Dyer's opinion.

On July 28, 2006 appellant requested a review of the written record. He stated that he disagreed with Dr. Hein's finding that he had no significant weakness or loss of motion. Appellant stated that the April 18, 2006 report of Dr. Talarico best described his condition, which included constant nagging pain and numbness in his left foot, the inability to stand for long periods of time and the swelling of his foot when the weather is cloudy. On April 18, 2006 Dr. Talarico stated that appellant continued to complain of pain with prolonged standing after November 19, 2005, the date of his maximum medical improvement. He found residuals of decreased strength in the left foot and leg, which resulted in difficulty lifting objects. Dr. Talarico noted sensation changes in appellant's left foot and leg, including slight pain and numbness. He found that appellant had decreased range of motion in the left foot secondary to pain.

By decision dated November 15, 2006, the Office hearing representative affirmed the July 21, 2006 schedule award. She noted that Dr. Hein's impairment rating could not be used because ratings for the whole person are not accepted under the Federal Employees' Compensation Act. The Office hearing representative found that Dr. Dyer properly applied Dr. Hein's findings to the A.M.A., *Guides* to arrive at the correct impairment rating. She noted that the medical records appellant submitted did not provide adequately detailed descriptions of his impairment to allow for modification of the schedule award.

On February 2, 2007 appellant requested reconsideration of the Office hearing representative's decision. He stated that Dr. Hein had referred him to Dr. Robson Spinola, a Board-certified podiatrist, for his ongoing foot and ankle pain. As evidence that, an increase in his schedule award was warranted, appellant provided a report from Dr. Spinola and a functional capacity evaluation conducted on January 9, 2007. On January 24, 2007 Dr. Spinola stated that appellant's condition had not improved since the time of his surgery. Appellant's symptoms included decreased strength in his mid-arch and tarsal tunnel area with standing, tingling and burning over his deep peroneal nerve and tenderness at the attachments of the tibialis posterior tendon. Dr. Spinola diagnosed chronic left foot pain, which incapacitated him from standing for long periods of time. He stated that the functional capacity evaluation showed that the left foot was the full etiological factor behind appellant's foot pain.

By decision dated April 10, 2007, the Office denied modification of appellant's schedule award. The Office found that appellant presented no evidence that the impairment of his left foot was greater than the seven percent previously awarded because neither Dr. Spinola's report nor the functional capacity evaluation addressed the permanent impairment of his left foot in terms of the A.M.A., *Guides*.

LEGAL PRECEDENT

The schedule award provision of the Act[1] and its implementing regulations[2] 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

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

specify the manner in which the percentage of loss should be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standards applicable to all claimants.[3] Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.[4]

The standards for evaluation of the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.[5]

Where an examining physician has provided a description of physical findings but failed to properly apply the A.M.A., *Guides*, a detailed opinion by the Office medical adviser giving an impairment rating based on the reported findings and the A.M.A., *Guides* may constitute the weight of the medical evidence.[6] Office procedures state that when an Office medical adviser explains his or her opinion, shows values and computation of impairment based on the A.M.A., *Guides* and considers each of the reported findings of impairment, his or her opinion may constitute the weight of the medical opinion evidence.[7]

ANALYSIS

The Board finds that this case is not in posture for a decision because the opinion of the Office medical adviser, Dr. Dyer, was insufficient to establish appellant's permanent impairment rating.

On June 6, 2006 Dr. Dyer reviewed appellant's medical records and Dr. Hein's impairment rating. He stated that appellant had tarsal tunnel syndrome with a surgical release of the left tarsal tunnel is May 2005. Dr. Dyer noted that appellant had residuals of hypesthesia in the medial plantar nerve distribution of the left foot, but did not have weakness in that foot. Based on Table 17-37, page 552, of the A.M.A., *Guides*, Dr. Dyer found an impairment of five percent of the left lower extremity or seven percent of the left foot.

The Board finds that the impairment rating provided by Dr. Dyer does not constitute the weight of the medical opinion evidence because he did not provide adequate rationale.[8] The

[3] 20 C.F.R. § 10.404(a).

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

[5] *See Paul A. Toms*, 28 ECAB 403 (1987).

[6] *James Massenburg*, 29 ECAB 850 (1978).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.7(h) (April 1993).

[8] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) ("As a matter of course, the [Office medical adviser] should provide rationale for the percentage of impairment specified.")

A.M.A., *Guides*, section 17.21, page 550, addresses peripheral nerve injuries to the lower extremities. It indicates that partial sensory and pain deficits should be rated as they are in the upper extremity, using Table 16-10, page 482, to identify the percentage of sensory deficit in a given nerve in conjunction with Table 17-37, page 552, which sets forth the maximum impairments for each lower extremity nerve. Dr. Dyer's report did not indicate the percentage of sensory deficit he utilized or which of Dr. Hein's examination findings formed the basis of that percentage. Without such rationale explaining his medical opinion using examination findings, the Board is unable to determine whether Dr. Dyer properly followed the A.M.A., *Guides.*

The Board also notes that Dr. Dyer did not address appellant's diagnosed dysesthesia in his impairment rating. Office procedure manual indicates that the opinion of the Office medical adviser can constitute the weight of the medical opinion evidence only if it is rationalized and considers each reported finding of impairment.[9] On examination, Dr. Hein found dysesthesia in appellant's medial plantar nerve and big toe, which he rated as a whole person impairment of two percent.[10] In his opinion, Dr. Dyer did not indicate that appellant had been diagnosed with dysesthesia or explain whether it was a proper basis for an impairment rating under the A.M.A., *Guides*. Because he provided no rationale for his exclusion of this finding of impairment, the Board finds that his opinion cannot constitute the weight of the medical opinion evidence.

The Board therefore finds that the impairment rating provided by Dr. Dyer is an insufficient basis for the Office's schedule award.

CONCLUSION

The Board finds that this case is not in posture for a decision because the opinion of the Office medical adviser was insufficient to establish appellant's permanent impairment rating. The case is remanded for further development of the medical evidence as necessary, followed by an appropriate decision.

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.7(h) (April 1993).

[10] Though whole person impairments are not allowed under the Act, Table 17-37, page 552, of the A.M.A., *Guides* indicates that this rating is equivalent to a rating of five percent impairment of the lower extremity or seven percent of the foot.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 10, 2007 and November 15 and July 21, 2006 are set aside and remanded for action consistent with this opinion.

Issued: December 7, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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