United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant	)	
	)	**Docket No. 08-2264**
and	)	**Issued: April 8, 2009**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Knoxville, TN, Employer	)	

Appearances:
P. Heith Reynolds, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 4, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 20, 2007, which denied her claim for a schedule award. Pursuant to 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 is entitled to a schedule award based on her accepted low back injury.

FACTUAL HISTORY

On October 2, 1989 appellant, then a 38-year-old city carrier, injured her low back when she twisted in her seat to pull flats onto a delivery tray. The Office accepted her claim for left hip strain, lumbosacral strain and low back syndrome. Appellant stopped work on October 3, 1989 and retired in 1994.

Appellant was treated by Dr. Calvin J. Johnson, a Board-certified orthopedic surgeon, who noted a history of injury and diagnosed low back syndrome with mild disc disease at L5-S1 and recommended conservative treatment. Dr. Johnson noted a computerized tomography scan revealed an annular bulge at L5-S1 with no large herniated disc. He opined that appellant could return to light-duty work. In notes dated June 29, 1992 to May 1999, Dr. Johnson advised that there was little change in her condition and her physical examination continued to show limitation of motion of the back with no neurological deficit. He diagnosed painful degenerative disc disease at L5-S1 and related her symptoms to the work incident of 1989. He noted that appellant was currently disabled due to a stroke.

On August 14, 2000 appellant filed a claim for a schedule award. She submitted a report from Dr. Johnson dated July 25, 2000. Dr. Johnson found that appellant had a 12 percent permanent impairment of the right lower extremity as a result of her work injury.

On July 13, 2001 the Office requested that appellant submit a detailed report from her treating physician which provided an impairment evaluation pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (A.M.A., *Guides*).

Appellant submitted reports dated January 31 to October 2, 2001, from Dr. Vincent J. Stravino, a Board-certified orthopedic surgeon, who diagnosed chronic back pain, tobacco abuse and insomnia. Dr. Stravino noted that appellant had been treated by Dr. Johnson since October 2l, 1989 and her condition was essentially the same without improvement.

In a letter dated September 6, 2002, appellant contended that she developed impairment to both legs as a result of the October 2, 1989 work injury. On October 28, 2003 the Office again requested that she submit a detailed report from a treating physician which provided an impairment evaluation pursuant to the A.M.A., *Guides.*[1]

In a May 21, 2004 report, an Office medical adviser reviewed the medical evidence of record and opined that there was no basis for rating impairment based on appellant's accepted conditions. He noted that appellant had been treated for symptoms related to her lumbar spine. A June 28, 2001 report from Watauga Orthopedics noted an impairment rating of five percent of the whole person based on diagnosis-related estimates for the lumbar spine. The medical adviser noted that a whole body impairment rating was not acceptable for schedule award determinations. With regard to the lower extremities, there was no evidence of any impairment to the lower extremities as the medical evidence did not document neurologic impairment or impingement which would result in lower extremity radiculopathy. The medical adviser found no evidence of any lumbar spinal stenosis or other pathology which would result in any nerve root impairment or impingement, which would affect the lower extremities and result in an impairment rating. He concluded that there was no basis for rating any impairment based on the accepted conditions.

In a decision dated August 2, 2004, the Office denied appellant's claim for a schedule award.

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

On August 2, 2005 appellant requested reconsideration. In a July 26, 2005 report, Dr. J. Scott Litton, Jr., a Board-certified family practitioner, noted that he had treated appellant for chronic low back pain originating from her October 2, 1989 work injury. He stated that a magnetic resonance imaging scan of the lumbar spine on August 17, 2004 revealed degenerative disc disease and desiccation of the intervertebral disc between L5 and S1. Dr. Litton opined that in accordance with the A.M.A., *Guides*, page 381, diagnosis-related estimates method, appellant was a lumbar category 2, with a five to eight percent impairment of the whole person. He noted that the impairment rating was based solely on her accepted back injury and that she had reached maximum medical improvement.

In a decision dated August 25, 2005, the Office denied modification of the August 2, 2004 decision. It found that a schedule award was not payable for impairment of the spine or back.

On July 20, 2006 appellant requested reconsideration. In a July 15, 2006 report, Dr. Litton advised that appellant had loss of use in both her upper and lower extremities. He noted that appellant sustained an approximately 30 percent loss of use of her upper extremities and 50 percent loss of use of her lower extremities pursuant to Figure 16-1a and Table 17-37, page 436 and 552, of the A.M.A., *Guides*. Dr. Litton attributed appellant's impairment to her work injury.

In a report dated November 15, 2006, an Office medical adviser opined that the impairment rating by Dr. Litton failed to properly apply the A.M.A., *Guides*. He noted that Dr. Litton found a 30 percent impairment of the upper extremities and a 50 percent impairment of the lower extremities and cited generally to Figure 16-1, page 436, 437 of the A.M.A., *Guides*. However, the medical adviser noted that Figure 16-1 was comprised of charts that can be filled out to aid in evaluating an individuals impairment rating; however, they do not provide any specific information and cannot be used in and of themselves as a basis for an impairment rating. The medical adviser noted that Dr. Litton also referenced Table 17-37, page 552 of the A.M.A., *Guides* which is used for impairments for nerve deficits; however, the accepted injury does not include nerve deficits, injuries or conditions. He concluded that Dr. Litton failed to provide sufficient findings on examination to support impairment of the extremities.

On February 28, 2007 the Office referred appellant to Dr. Kirpal S. Sidhu, a Board-certified orthopedic surgeon, for a second opinion. In a May 25, 2007 report, Dr. Sidhu reviewed the records and performed a physical examination of appellant. He detailed the history of appellant's work-related back injury and medical treatment and diagnosed chronic low back pain, degenerative disc disease, diabetes mellitus, history of stroke and hypothyroidism. On physical examination, there was no redness or gross deformity of the back, tenderness in the lumbar paraspinals, appellant could walk on her tip toes and on her heels, straight leg raises were to 55 degrees, dullness in pin prick sensation in both lower extremities and normal range of motion of the hips and knees. He found no evidence of muscle wasting, no loss of reflexes, no disc herniation or spinal stenosis, no limitation of any joints of the lower extremities, no objective nerve root deficit in the lower extremities, no motor deficit, normal deep tendon reflexes, no joint ankylosis or loss of muscle strength, no wasting and no peripheral nerve injury. Dr. Sidhu noted that appellant was diagnosed with several comorbidities, including diabetes mellitus and hypothyroidism which were known for causing peripheral neuritis. He opined that

appellant's initial groin pain was perhaps the result of the lumbar strain which resolved. Dr. Sidhu opined that appellant's ongoing back pain was explained by the natural progression of degenerative disc disease. He opined that the numbness appellant experienced in both legs was not causally related to the accepted back condition but to sensory deficit caused by her diabetic peripheral neuropathy and hypothyroidism. Dr. Sidhu concluded that appellant did not sustain any impairment of the lower extremities from the back injury of October 2, 1989. He noted that appellant reached maximum medical improvement on July 26, 2005.

In a decision dated June 20, 2007, the Office denied modification of the August 25, 2005 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulations[3] 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 specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[4]

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.[5] Neither the Act nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole.[6] The Board notes that section 8101 specifically excludes the back from the definition of "organ."[7] However, a claimant may be entitled to a schedule award for permanent impairment to the upper or lower extremities even though the cause of the impairment originates in the back or spine.[8]

ANALYSIS

On appeal, appellant contends that she is entitled to a schedule award for permanent partial impairment of the lower extremities and back. The Office accepted appellant's claim for left hip strain, lumbar strain and low back syndrome. As noted, the Act does not provide for a

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *See id*.; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

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

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

[7] 5 U.S.C. § 8101(19).

[8] *Thomas J. Engelhart*, *supra* note 5.

schedule award based on impairment to the back or spine. Appellant may only receive a schedule award for impairment to the upper or lower extremities if such impairment is established as being due to her accepted back condition.

Appellant submitted a report from Dr. Litton dated July 15, 2006. The Board has carefully reviewed Dr. Litton's report and notes that he failed to provide adequate findings on physical examination to support a schedule award for permanent partial impairment of appellant's lower extremities. Dr. Litton noted findings upon physical examination which revealed prolonged guarding and muscle spasm of the paravertebral muscles. Although he opined that appellant had 30 percent loss of use of her upper extremities and 50 percent loss of use of her lower extremities pursuant to Figure 16-1a and Table 17-37, page 436 and 552 of the A.M.A., *Guides,* he provided no objective clinical evidence of neurological impairment. The Board notes that Figure 16-1a, page 436 to 437 are comprised of charts that an evaluator can use in determining impairment. However, these charts do not provide any specific information and cannot be cited to as a basis for an impairment rating. Moreover, appellant's claim was accepted for a low back condition. Dr. Litton provided no explanation as to how a lumbar strain or low back syndrome would cause impairment to the upper extremities. He also generally referenced Table 17-37, page 552 of the A.M.A., *Guides* which is used for rating impairments for nerve deficits. However, Dr. Litton's reports fail to identify any specific nerve causing motors or sensory deficit due to the accepted conditions. The report offered no basis on which to rate impairment under the A.M.A., *Guides*.[9]

The Office referred appellant to Dr. Sidhu who, in a report dated June 14, 2007, determined that she had no impairment of the lower extremities. Dr. Sidhu noted findings upon physical examination of no gross deformity of the back, tenderness in the lumbar paraspinals, dullness in pinprick sensation in both lower extremities, no evidence of muscle wasting, no loss of reflexes, no disc herniation or spinal stenosis, no limitation of the joints of the lower extremity, no objective nerve root deficit in the lower extremities, no motor deficit, normal deep tendon reflexes, no joint ankylosis or loss of muscle strength, no wasting and no peripheral nerve injury. He opined that appellant's initial groin pain was perhaps the result of the lumbar strain which had resolved and any ongoing back pain was the result of the natural progression of degenerative disc disease. Dr. Sidhu further opined that the peripheral neuropathy appellant experienced was due to her diabetes mellitus and hypothyroidism. He concluded that, in accordance with the A.M.A., *Guides,* appellant did not sustain any permanent impairment of the lower extremities from her back injury of October 2, 1989.

The Board finds that the Office properly found that appellant had no permanent impairment to a scheduled member of the body pursuant to the A.M.A., *Guides.* There are no medical reports of record, in conformance with the A.M.A., *Guides,* which support that appellant has a ratable impairment to a scheduled member of the body.

[9] Before the A.M.A., *Guides* can be utilized, the claimant's physician most provide a description of impairment including loss in degrees of range of motion and the decrease in strength or disturbance of sensation. *See Peter C. Bilkind*, 55 ECAB 580 (2005).

CONCLUSION

The Board finds that the Office properly denied appellant's claim for a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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