United States Department of Labor
Employees' Compensation Appeals Board

G.M., Appellant	)	
and	)	**Docket No. 08-2077**
	)	**Issued: May 6, 2009**
U.S. POSTAL SERVICE, MIDTOWN STATION, St. Petersburg, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 21, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated November 14, 2007, finding a one percent impairment of the left leg and July 10, 2008 nonmerit decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has more than a one percent impairment of the left leg, for which he received a schedule award; and (2) whether the Office properly denied his request for further merit review pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 14, 2006 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim alleging that on that date he experienced pain, tingling and numbness in his left foot, toes and leg, lower back and buttocks as he stepped out of his postal vehicle to make a parcel

delivery. By letter dated October 17, 2006, the Office accepted the claim for spinal stenosis and displacement of a lumbar intervertebral disc without myelopathy.

A February 20, 2007 medical report from Dr. Thomas C. Tolli, an attending Board-certified orthopedic surgeon, noted appellant's complaints of back and left lateral hip pain. He stated that appellant had reached maximum medical improvement as of February 20, 2007. Dr. Tolli opined that appellant sustained a seven percent impairment based on the 1996 Florida Uniform Permanent Impairment Rating Schedule. In an April 5, 2007 report, he recommended appellant not continue working as a mail carrier. In a work capacity evaluation form of the same date, Dr. Tolli set forth appellant's physical limitations resulting from the accepted conditions.

On April 6, 2007 appellant filed a claim for a schedule award.

By letter dated April 13, 2007, the Office requested that appellant submit a medical report from an attending physician which addressed the extent of any permanent impairment he sustained due to his August 14, 2006 employment injuries based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In an April 19, 2007 report, Dr. Tolli stated that appellant's left L5 and S1 nerves had been affected and he experienced moderate pain. He noted, however, that appellant had no weakness or atrophy.

On June 25, 2007 an Office medical adviser reviewed the medical evidence of record and stated that appellant reached maximum medical improvement on February 20, 2007. The Office medical adviser classified appellant's mild sensory deficit in the left S1 distribution without motor loss as Grade 4 for a 25 percent sensory impairment (A.M.A., *Guides* 424, Table 15-15). The Office medical adviser multiplied the 25 percent sensory deficit rating by 5 percent, the maximum impairment allowed for the S1 nerve, to calculate a 1 percent impairment of the left lower extremity (A.M.A., *Guides* 424 and Table 15-18).

By letter dated July 11, 2007, the Office advised Dr. Tolli that appellant could not receive a schedule award for his work-related back condition but, if this condition was impairing one or both of his lower extremities, he may be entitled to a schedule award. It again requested that he determine the extent of any employment-related permanent impairment sustained by appellant based on the A.M.A., *Guides*. Dr. Tolli resubmitted copies of his February 20 and April 5, 2007 reports.

On August 1, 2007 the Office medical adviser again reviewed the medical evidence of record. The Office medical adviser noted that Dr. Tolli's finding of seven percent impairment based on the Florida Uniform Permanent Guide was not applicable as the Office only recognized impairments based on the A.M.A., *Guides*. The Office medical adviser stated that his prior one percent impairment rating of the left lower extremity remained unchanged.

By decision dated November 14, 2007, the Office granted appellant a schedule award for a one percent impairment of the left leg.

On April 29, 2009 appellant requested reconsideration. He submitted medical records covering the period November 26, 2006 through June 2, 2008 which addressed his right shoulder, lumbar, cervical, foot, leg and emotional conditions and his work restrictions. The additional reports of Dr. Tolli did not address permanent impairment to appellant's left leg.

By decision dated July 10, 2008, the Office denied appellant's request for reconsideration on the grounds that it neither raised substantive legal questions nor included new and relevant evidence and was insufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulations[2] set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[3] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[4]

A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.[5] As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine, no claimant is entitled to such an award.[6] However, as the Act makes provision for the lower extremities, a claimant may be entitled to a schedule award for permanent impairment to a lower extremity even though the cause of the impairment originates in the spine, if the medical evidence establishes impairment as a result of the employment injury.[7]

Section 15.12 of the fifth edition of the A.M.A., *Guides* describes a method to be used for evaluation of impairment due to sensory loss of the extremities. The nerves involved are to be first identified. Under Tables 15-15 the extent of any sensory loss due to nerve impairment is to be determined, to be followed by determination of the maximum impairment due to nerve

[1] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[2] 20 C.F.R. § 10.404.

[3] 5 U.S.C. § 8107(c)(19).

[4] 20 C.F.R. § 10.404.

[5] *W.C.*, 59 ECAB ___ (Docket No. 07-2257, issued March 5, 2008); *Anna V. Burke*, 57 ECAB 521 (2006).

[6] *D.N.*, 59 ECAB ___ (Docket No. 07-1940, issued June 17, 2008).

[7] *J.Q.*, 59 ECAB ___ (Docket No. 06-2152, issued March 5, 2008).

dysfunction applying Table 15-18 for the lower extremity. The severity of the sensory deficit is to be multiplied by the maximum value of the relevant nerve.[8]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained spinal stenosis and displacement of the lumbar intervertebral disc without myelopathy. Dr. Tolli, an attending physician, stated that appellant's continuing back and left lateral hip pain constituted a seven percent impairment based on the 1996 Florida Uniform Permanent Impairment Rating Schedule. As noted, the Act does not authorize schedule awards for permanent impairment of the spine. Further, Dr. Tolli did not provide an impairment rating based on the tables and figures of the A.M.A., *Guides*. It is well established that an impairment rating under the Act is to be made utilizing the A.M.A., *Guides*.[9] Therefore, the Board finds that Dr. Tolli's opinion that appellant sustained seven percent impairment of the left lower extremity is of diminished probative value.

The Office medical adviser reviewed the medical evidence of record. The medical adviser determined that appellant's mild sensory loss in the left S1 distribution without motor loss constituted a Grade 4 or 25 percent sensory deficit (A.M.A., *Guides* 424, Table 15-15). The medical adviser multiplied the 25 percent sensory deficit rating by the 5 percent maximum sensory loss under Table 15-18 on page 424 of the A.M.A., *Guides*, resulting in a 1 percent impairment of the left leg. The Office medical adviser properly utilized the A.M.A., *Guides* and provided rationale for rating a one percent impairment of the left leg. The Board finds that the Office medical adviser's opinion represents the weight of the medical evidence of record. Appellant has no more than a one percent impairment of the left leg.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,[10] its regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[11] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[12] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

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[8] A.M.A., *Guides* 423.

[9] *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[10] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

[11] 20 C.F.R. § 10.606(b)(1)-(2).

[12] *Id.* at § 10.607(a).

ANALYSIS -- ISSUE 2

The Board finds that the Office properly denied appellant's request for consideration. In its July 10, 2008 decision, it denied further merit reviews as appellant neither raised substantive legal questions nor included new and relevant evidence. The Board notes that the medical evidence submitted by appellant did not address the permanent impairment to his left leg. Rather, this evidence noted appellant's work restrictions or addressed his cervical and other diagnosed conditions. This evidence is not relevant to establishing greater impairment than that awarded by the Office. Evidence that does not address the particular issue involved does not constitute a basis for reopening a claim for further merit review.[13]

CONCLUSION

The Board finds that appellant has no more than a one percent impairment of the left leg, for which he received a schedule award. The Board further finds that the Office properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2008 and November 14, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 6, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[13] *See Freddie Mosley*, 54 ECAB 255 (2002).