United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 10-2092**
	)	**Issued: July 5, 2011**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Jackson, MS, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 13, 2010 appellant filed a timely appeal from a March 19, 2010 merit decision of the Office of Workers' Compensation Programs regarding his schedule award claim. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has more than three percent impairment of the left lower extremity, for which he received a schedule award.

FACTUAL HISTORY

On March 22, 2007 appellant, then a 56-year-old medical supply technician, filed an occupational disease claim for low back pain and weakness of his left leg which he alleged was

[1] 5 U.S.C. § 8101 *et seq.*

causally related to bending, stooping, lifting, pushing and pulling of heavy instrument carts and trays. He indicated that he was first aware of his condition and that it was caused or aggravated by his employment on June 28, 1977. The Office accepted appellant's claim for a lumbar sprain. Appellant retired in October 2006.

On October 4, 2007 appellant claimed a schedule award. In an August 15, 2007 report, a physical therapist noted the history of injury and that appellant had back surgery for L5-S1 disc herniation with good results. Under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (hereinafter A.M.A., *Guides*), the physical therapist opined that appellant had seven percent whole person impairment based on category II diagnosis-related estimates (DRE) evaluation method Table 15-3. Dr. Wesley Granger, a Board-certified internist, indicated that he agreed with the physical therapist's impairment evaluation. In a November 5, 2007 report, the physical therapist and Dr. Granger opined that appellant had 10 percent permanent impairment under the fifth edition of the A.M.A., *Guides* due to lower back weakness, left lower extremity pain and left foot plantar weakness.

In a November 28, 2007 report, an Office medical adviser stated that Dr. Granger's August 15, 2007 seven percent whole person rating could not be used as the Office did not recognize whole person impairments. He further found that Dr. Granger's November 5, 2007 impairment rating equated to four percent permanent impairment of the left leg under the fifth edition of the A.M.A., *Guides* for plantar flexion weakness due to the S1 nerve root.

By decision dated January 25, 2008, the Office denied a schedule award on the basis that the medical evidence failed to establish that appellant's permanent impairment of the left leg was due to the accepted lumbar sprain as opposed to appellant's lumbar disc conditions or prior back surgery which had not been accepted by the Office. Appellant disagreed and requested an oral hearing, which was held telephonically on June 16, 2008. By decision dated September 5, 2008, an Office hearing representative vacated the January 25, 2008 decision and remanded the case for the Office to obtain a second opinion concerning whether appellant sustained any permanent impairment due to a work-related injury.[2]

The Office prepared a statement of accepted facts and referred appellant along with the medical record to Dr. Frederick Keppel, a Board-certified orthopedic surgeon. In a January 28, 2009 report, Dr. Keppel opined that appellant had work-related low back and left lower extremity pain that resulted in 2001 surgery for a left-sided L5-S1 disc. He noted that, while appellant complained of left posterior leg pain, he did not show any evidence of weakness on examination or atrophy. Dr. Keppel opined that appellant had purely subjective posterior leg pain. He also noted that the magnetic resonance imaging (MRI) scan findings did not correlate to his left leg pain. Dr. Keppel opined that appellant had eight percent impairment of the whole body secondary to his surgery and the residual subjective left leg pain.

[2] The hearing representative noted that the evidence reflected that appellant had a history of back problems dating back to 1977 and that he underwent a lumbar laminectomy in 2001. He also indicated that appellant had previous claims for back injuries of July 3, 2004 (case file number xxxxxx703) and September 13, 2004 (case file number xxxxxxx047). These other claims were not accepted and are not before the Board on the present appeal.

On March 4, 2009 the Office medical adviser noted the second opinion examiner found no evidence of motor or sensory loss in the lower extremities and no evidence of spinal nerve loss. He advised that the Office does not recognize whole person or subjective impairments. The Office medical adviser opined that, as there was no spinal nerve loss, there was no impairment to the lower extremities.

The Office requested that Dr. Keppel provide a permanent partial impairment rating of the left leg. In an April 6, 2009 report, Dr. Keppel opined that appellant had 20 percent permanent impairment of the left leg under the fifth edition of the A.M.A., *Guides.*

In an April 22, 2009 report, the Office medical adviser indicated that the second opinion examiner did not provide any objective findings or a basis under the A.M.A., *Guides* for his impairment opinion. Thus, he opined that appellant had no impairment to the lower extremities.

The Office found that another second opinion was necessary and referred appellant to Dr. Byron Thomas Jeffcoat, a Board-certified orthopedist, who was requested to provide an impairment rating of appellant's left leg under the sixth edition of the A.M.A., *Guides*. In a September 9, 2009 report, Dr. Jeffcoat noted the history of injury, reviewed the medical record, and set forth examination findings. He noted that appellant had normal strength of the lower extremities but had decreased sensation of the left leg, specifically the lateral side of the left leg from just below the knee to the fourth and fifth toes. Dr. Jeffcoat indicated that there were "some minimal radicular symptoms which does not keep the patient from doing any work." He opined under the sixth edition of the A.M.A., *Guides*, Table 17-4, page 570, that appellant fell into class 2 of the intervertebral disc herniation with 10 percent whole body impairment.

In a September 23, 2009 report, the Office medical adviser indicated that the Office does not recognize impairments based on Chapter 17, the spine chapter, and does not recognize impairment to the body as a whole. Using Dr. Jeffcoat's September 9, 2009 examination findings of minimal radicular symptoms and sensory decrease in the left lateral left foot, the Office medical adviser opined that under the sixth edition of the A.M.A., *Guides* appellant had three percent permanent impairment of the left leg for peroneal sensory nerve impairment. He opined that appellant was a class 1 default grade C under Table 16-12, page 535. Dr. Jeffcoat stated that the diagnosed condition (CDX) impairment class was one, the grade modifier based on Functional History (GMFH) was one, the grade modifier based on Physical Examination (GMPE) was one, and the grade modifier based on Clinical Studies (GMCS) was not applicable. He applied the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) and found zero or no adjustment.

By decision dated October 29, 2009, the Office issued a schedule award for three percent permanent impairment of the left leg. The period of the award ran 8.64 weeks from October 6 to December 5, 2006.

Appellant requested a review of the written record. He noted the different permanent impairment ratings and indicated that he was awarded for a sciatic nerve problem, which he stated he did not have. No additional evidence or comments were received.

By decision dated March 19, 2010, an Office hearing representative affirmed the October 29, 2009 schedule award.

LEGAL PRECEDENT

The schedule award provision of the Act[3] and its implementing regulations[4] 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. The Act, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of the Office.[5] 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.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

The sixth edition requires identifying the impairment class for the diagnosed condition CDX, which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.[8] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[9]

After obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for a rationalized opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*.[10]

ANALYSIS

The Office accepted that appellant had a work-related lumbar sprain. Appellant subsequently requested a schedule award. In his August 15, 2007 report, Dr. Granger opined that appellant had seven percent whole person impairment. In his November 5, 2007 report, he opined that appellant had 10 percent permanent impairment due to low back weakness, pain left lower extremity and left foot plantar weakness. The Board notes that neither the Act nor the

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

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

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

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

[9] *Id.* at 521.

[10] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

regulations authorize a schedule award for the permanent impairment of the spine, neck or back.[11] The Act also does not authorize schedule awards for whole person impairment.[12] Thus, the Office did not accept the rating by Dr. Granger because a claimant may not receive a schedule award for impairment to the spine or for impairment of the whole person. Furthermore, effective May 1, 2009, all ratings must be based on the sixth edition of the A.M.A., *Guides*. Dr. Granger's ratings along with the Office's medical adviser's November 28, 2007 rating predate the Office's use of the sixth edition of the A.M.A., *Guides.*

In a January 28, 2009 report, Dr. Keppel opined that appellant had eight percent impairment of the whole body secondary to his surgery and the residual subjective left leg pain. The Office did not accept the rating by Dr. Keppel because it may not give schedule awards for whole body impairments and the Office medical adviser noted there was no evidence of motor or sensory loss in either lower extremity. In an April 6, 2009 report, Dr. Keppel opined that appellant had 20 percent permanent impairment of the left leg. However, he did not adequately explain how he made this rating based on the A.M.A., *Guides* or provide any objective findings to support his rating. For these reasons and the fact that these reports predate the Office's use of the sixth edition of the A.M.A., *Guides*, these reports are of diminished probative value.

In a September 8, 2009 report, Dr. Jeffcoat reported that appellant had minimal radicular symptoms and findings of sensory decrease in the lateral left foot. He opined that appellant had 10 percent impairment of the whole body due to intervertebral disc herniation. As noted, however, the Act does not provide for whole person impairment. Dr. Jeffcoat did not otherwise explain how appellant had any impairment of a scheduled body member under the sixth edition of the A.M.A., *Guides.* As such, his finding on impairment is insufficient to support a schedule award.

However, an Office medical adviser, in his September 23, 2009 report, utilized Dr. Jeffcoat's September 9, 2009 examination findings and applied them to the sixth edition of the A.M.A., *Guides*. The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation. It requires identifying the impairment class for the CDX, which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.[13] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX). The Office medical adviser noted that Dr. Jeffcoat's examination showed minimal radicular symptoms and sensory decrease in the left lateral left foot. He opined that appellant had three percent permanent impairment of the left lower extremity for peroneal sensory nerve impairment. The Office medical adviser identified that appellant was a class 1 default grade C under Table 16-12, page 535. He stated that CDX impairment class was one, the grade modifier based on GMFH was one, the grade modifier based on GMPE was one, and the grade modifier based on GMCS was not applicable. The Office medical adviser applied the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) and found zero or no adjustment. Consequently, the Board finds the Office medical adviser's opinion is in accordance with the A.M.A., *Guides*. There is no medical report

[11] 5 U.S.C. § 8101(19); *Timothy J. McGuire*, 34 ECAB 189 (1982).

[12] *D.J.*, 59 ECAB 620 (2008).

[13] *Supra* note 8.

showing a greater percentage of permanent partial impairment of the left lower extremity in accordance with the sixth edition of the A.M.A., *Guides*.

Appellant has alleged before the Office that the schedule award was given for a sciatic condition, which he does not have. A review of the Office medical adviser's report, however, indicates the schedule award was given for a peroneal nerve deficit that was found on examination by Dr. Jeffcoat. On appeal as well as before the Office, appellant has questioned why the earlier impairment ratings by both the Office's and his treating physicians held no value. For the reasons discussed herein, only the September 23, 2009 report of the Office medical adviser is in accordance with the sixth edition of the A.M.A., *Guides* and properly supports payment of a schedule award.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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