United States Department of Labor
Employees' Compensation Appeals Board

L.J., Appellant	)	
and	)	**Docket No. 10-1263**
	)	**Issued: March 3, 2011**
DEPARTMENT OF DEFENSE, DEFENSE DISTRIBUTION DEPOT NORFOLK, Fort Belvoir, VA, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 2, 2010 appellant filed a timely appeal from two merit decisions dated November 24, 2009 of the Office of Workers' Compensation Programs regarding his schedule award claim. Pursuant to 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 four percent impairment of the right lower extremity or more than three percent impairment to both the right and left upper extremities, for which he received schedule awards.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated August 20, 1999, the Board affirmed an Office decision denying appellant's request for reimbursement of chiropractic

expenses.[1] By decision dated June 4, 2007, the Board affirmed Office decisions dated April 6 and August 29, 2006 which found appellant had not established that he had any impairment of his upper extremities or that he had greater than an eight percent impairment of his left leg.[2] The facts and the circumstances of the case as set out in the Board's prior decisions are incorporated herein by reference.[3]

On August 9, 2008 appellant requested a schedule award. In an August 5, 2008 report, Dr. Antonio Quidgley-Nevares, a physiatrist, stated that appellant presented for a regularly scheduled follow-up and requested an impairment rating. On examination, appellant had decreased range of motion in the cervical spine in all planes secondary to pain and decreased sensation in the bilateral upper extremities and the left lower extremity globally. Dr. Quidgley-Nevares noted that appellant reached maximum medical improvement prior to March 7, 2005. Under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*), appellant had a diagnosis-related estimate (DRE) category 2 lumbosacral spine impairment with five to eight percent whole body impairment per Table 15.3 and a DRE category 2 cervical spine impairment with five to eight percent whole body impairment the cervical spine per Table 15.5.

In a November 25, 2008 report, Dr. Felix M. Kirven, a Board-certified orthopedic surgeon, noted decreased sensation in the L5 distribution of the right lower extremity and decreased sensation in the C6-C7. There was no mention of any sensory impairment in the left lower extremity. The motor examination showed normal strength in both lower extremities and upper extremities.

On January 10, 2009 an Office medical adviser reviewed the medical evidence and found it was insufficient to support greater impairment. He advised that the eight percent whole body impairment could not be converted into left leg impairment and was not appropriate for impairment rating purposes.

In a February 27, 2009 letter, the Office advised appellant of the information necessary to support a schedule award.

In a March 10, 2008 form report, Dr. Kirven advised that appellant reached maximum medical improvement on March 8, 2008. He indicated that the C6-C7 nerve roots were affected such that appellant had 70 percent loss of the upper extremities due to sensory deficit and no impairment of the upper extremities due to loss of strength. Progress reports from Dr. Kirven noted decreased sensation in S1 dermatome bilaterally and decreased sensation in the C6-C7 dermatome.

On August 12, 2009 an Office medical adviser reviewed a statement of accepted facts and noted that appellant received compensation for eight percent impairment of the left leg. The

[1] Docket No. 97-2072 (issued August 20, 1999).

[2] Docket No. 07-39 (issued June 4, 2007).

[3] The Office accepted the claim for low back strain, herniated disc L5-S1, cervical strain and lumbar radiculopathy.

reports indicated there was decreased sensation in the C6-C7 nerve root and decreased sensation in the L5 distribution in the right lower extremity. The Office medical adviser stated that there was no mention of any deficit in the left lower extremity and strength was normal in the upper and lower extremities. Under the sixth edition of the A.M.A., *Guides*, he opined that decreased sensation in the L5 distribution in the right lower extremity resulted in four percent right leg impairment. The Office medical adviser noted under Table 16-12, page 535, that appellant was placed in a Class 1 category with four percent being the default percentage for the sciatic nerve. As to the C5-C6 impairment, Table 15-20, page 434 a Class 1 category resulted in a default impairment of three percent for both the right upper extremity and the left upper extremity. The Office medical adviser opined that the date of maximum medical improvement was January 8, 1997, one year from the date of injury.

In a November 24, 2009 decision, the Office granted a schedule award for four percent permanent impairment to the right leg. The period of the award ran from July 12 to September 30, 2005, for 11.52 weeks of compensation.[4] In a separate November 24, 2009 decision, the Office awarded appellant three percent permanent impairment to the left arm and three percent permanent impairment to the right arm. The award ran from October 1, 2005 to February 9, 2006.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[5] and its implementing regulations[6] 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.[7] 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.[8] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[9]

[4] The Office adjusted the starting date of the schedule award to July 12, 2005 as appellant received disability compensation through July 11, 2005.

[5] 5 U.S.C. §§ 8101-8193.

[6] 20 C.F.R. § 10.404.

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

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

[9] 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).

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).[10] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[11]

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*.[12]

ANALYSIS

The Office accepted that appellant's January 8, 1996 slip and fall caused a low back strain, herniated disc L5-S1, cervical strain and lumbar radiculopathy. On August 9, 2008 appellant requested a schedule award. In an August 5, 2008 report, Dr. Quidgley-Nevares found that appellant had a DRE category 2 lumbosacral spine impairment with five to eight percent whole body impairment per Table 15.3 and a DRE category 2 cervical spine impairment with five to eight percent whole body impairment the cervical spine per Table 15.5. The Board notes that neither the Act nor the regulations authorize a schedule award for the permanent impairment of the spine, neck or back.[13] Thus, the Office did not accept the rating by Dr. Quidgley-Nevares because a claimant may not receive a schedule award for impairment to the spine or for impairment of the whole person. Effective May 1, 2009, all ratings must be based on the sixth edition of the A.M.A., *Guides*. The rating by Dr. Quidgley-Nevares also predated the Office's use of the sixth edition of the A.M.A., *Guides*. On March 10, 2008 Dr. Kirven noted decreased sensation in S1 dermatome bilaterally and decreased sensation in the C6-C7 dermatome. He opined that appellant had 70 percent loss of the upper extremities due to sensory deficit in the C6-C7 nerve root. However, Dr. Kirven did not adequately explain how he made this rating based on the A.M.A., *Guides*. For these reasons, these reports are of diminished probative value.

The Office medical adviser reviewed the medical record. He found that appellant had four percent right lower extremity impairment according to Table 16-12 of the A.M.A., *Guides*. The Office medical adviser made general reference to the information at hand but did not explain adequately how his impairment ratings conform to 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 diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).[14] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX). The Office medical adviser identified only the table used and class rating without providing any

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

[11] *Id.* at 521.

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

[13] 5 U.S.C. § 8101(19); *Timothy J. McGuire*, 34 ECAB 189 (1982).

[14] *Supra* note 10.

explanation of the diagnosis category or evaluation of the grade modifiers. As noted, grade modifiers should be considered for functional history, physical examination and clinical studies and these grade modifiers can change the extent of a given impairment rating.[15] Consequently, the Board finds that the opinion of the Office medical adviser requires clarification.

The Office medical adviser further determined that appellant had a three percent permanent impairment to each arm under Table 15-20 due to C5-C6 impairment. However, the medical records reflect that the C6-C7 nerve root was affected with decreased sensation. The Office medical adviser did not specify the medical evidence he relied upon in finding that appellant had a permanent impairment to the upper extremities. Office procedures and Board precedent require that the record contain a medical report with a detailed description of the impairment.[16] This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[17] There is no medical report clearly describing permanent upper extremity impairments to either the left or right arms due to appellant's employment injury.

The Office medical adviser did not adequately explain how he applied the sixth edition of the A.M.A., *Guides* in rating impairment in this case. The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. Recognizing that certain jurisdictions, such as under the Act, mandate ratings for extremities and preclude ratings for the spine, the A.M.A., *Guides* has offered an approach to rating spinal nerve impairments consistent with sixth edition methodology.[18] The Office has adopted this approach for rating impairment to the upper or lower extremities caused by a spinal injury.[19] The Board will remand the case for further development of the evidence to determine the extent of appellant's permanent impairment to the right leg and both arms. Following such development as deemed necessary, the Office shall issue an appropriate merit decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

[15] *Id*. at 515-18.

[16] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c)(1) (August 2002); *Peter C . Belkind*, 56 ECAB 580 (2005).

[17] *Vanessa Young*, 55 ECAB 575 (2004).

[18] Rating Spinal Nerve Extremity Impairment Using the sixth edition, the A.M.A., *Guides* Newsletter (A.M.A., *Guides* Chicago, IL), July/August 2009.

[19] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010) (Exhibit 1, 4).

ORDER

IT IS HEREBY ORDERED THAT the two November 24, 2009 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: March 3, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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