United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 13-2044**
	)	**Issued: February 20, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 6, 2013 appellant filed a timely appeal from a March 29, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 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 has established entitlement to a schedule award due to her accepted employment injuries on October 4, 2007.

[1] In her appeal letter, appellant did not contest OWCP's June 4, 2013 denial of compensation due to temporary total disability for the accepted work conditions on February 25, March 29, April 1 and 4, 2013. Accordingly, the Board will not address the lost wages claim for the period February 25 to April 4, 2013.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 31, 2007 appellant, then a 35-year-old window clerk, filed an occupational disease claim asserting that repetitive lifting and placing boxes on the counter caused a pop in her neck and lumbar region. OWCP accepted the claim for displacement of cervical intervertebral disc without myelopathy, lumbar sprain, brachial radiculitis and cervical spondylosis without myelopathy. Appropriate benefits were paid, including a July 14, 2011 C5-6 anterior cervical discectomy/fusion. Appellant eventually returned to work.

On September 4, 2012 appellant filed a Form CA-7, claim for a schedule award. In an April 18, 2012 report, Dr. Bryon E. Strain, a Board-certified physiatrist, opined that she reached maximum medical improvement on March 26, 2012 and had no restrictions. In his March 26, 2012 report, he noted that appellant's examination of both the cervical and lumbar spine revealed full range of motion with end range pain with extension. Strength was full throughout with sensory intact to light touch. Straight leg raise was negative with a positive Fabers on the left. Dr. Strain released appellant to work full duty with no restrictions.

In a separate unsigned report of March 26, 2012, Dr. Strain opined that appellant had six percent impairment of the whole person for the cervical spine and zero percent impairment for the whole person for the lower back under Chapter 17 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a September 27, 2012 report, OWCP's medical adviser noted the history of injury and his review of the medical records, including Dr. Strain's March 26, 2012 report. He noted that FECA does not provide schedule awards for the spine and impairment due to a spinal nerve injury was best determined under the method described the July to August 2009 *The Guides Newsletter* for Rating Spinal Nerve Extremity Impairment. The medical adviser recommended that Dr. Strain provide an impairment determination under Proposed Table 1 of July to August 2009 *The Guides Newsletter* or, if Dr. Strain was unable to do so, OWCP should refer appellant for a second opinion for an impairment evaluation.

On October 16, 2012 OWCP requested that Dr. Strain provide an impairment opinion in accordance with Proposed Table 1 of July to August 2009 *The Guides Newsletter*. In a November 6, 2012 letter, Dr. Strain advised that he did not perform the March 26, 2012 impairment evaluation; rather Aaron Ford, a chiropractor, had performed the evaluation and questions should be directed toward him.

In a February 20, 2013 report, Dr. Zvi Kalisky, a Board-certified phystatrist serving as a second opinion examiner, noted the history of injury, his review of the statement of accepted facts and the medical record and presented findings on examination. An impression of failed neck surgery syndrome with nonverifable radicular symptoms in bilateral upper extremities with no objective physical or electrodiagnostic findings of radiculopathy; status post anterior cervical discectomy and fusion at C5-6; and chronic low back pain with no objective radicular findings. Dr. Kalisky opined that appellant reached maximum medical improvement as of December 14, 2012, the date of her recent cervical computerized tomography scan. Using the sixth edition of A.M.A., *Guides* and *The Guides Newsletter* July to August 2009, he opined that she had zero percent bilateral upper and lower extremity impairments. For cervical radiculopathy,

Dr. Kalisky used Table 1 of *The Guides Newsletter* and opined that appellant had class 0 or zero percent impairment for the right upper and left upper extremities for roots C5, C6, C7, C8 and T1. This was based on the fact that appellant had no specific dermatomal distribution or pain or paresthesias, there were no objective valid motor or sensory findings of cervical radiculopathy on examination and the electromylogram and nerve conduction study were negative for cervical radiculopathy. For lumbar radiculopathy, Dr. Kalisky utilized Table 2 of *The Guides Newsletter* and opined that appellant had class 0 or zero percent impairment of the right and left lower extremities for roots L3, L4, L5 and S1. This was based on no specific dermatomal distribution of pain or paresthesias and no objective valid motor or sensory findings of lumbar radiculopathy on examination.

On March 26, 2013 OWCP's medical adviser reviewed the statement of accepted facts along with the medical record, including Dr. Kalisky's February 20, 2013 report. He opined that appellant reached maximum medical improvement on December 14, 2012. Using Dr. Kalisky's examination findings, the medical adviser concurred that she had zero percent impairment of the right and left upper extremities and zero percent impairment of the right and left lower extremities under the A.M.A., *Guides*.

By decision dated March 29, 2013, OWCP denied appellant's schedule award claim on the grounds that the medical evidence of file failed to demonstrate a measurable impairment.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and its implementing regulations 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. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP for evaluating schedule losses and the Board has concurred in such adoption.[4]

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under FECA for injury to the spine.[5] In 1960, amendments to FECA modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of FECA include the extremities, a claimant may be entitled to a

[3] *Id*. at § 8107.

[4] *See* 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[5] *Pamela J. Darling*, 49 ECAB 286 (1998).

schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.[6]

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures indicate that *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment using the sixth edition (July to August 2009) is to be applied.[7]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with an OWCP medical adviser providing rationale for the percentage of impairment specified.[8]

ANALYSIS

OWCP accepted conditions of displacement of cervical intervertebral disc without myelopathy, lumbar sprain, brachial radiculitis and cervical spondylosis without myelopathy and paid appropriate benefits, including a C5-6 anterior cervical discectomy/fusion. By decision dated March 29, 2013, it denied appellant's schedule award claim on the grounds no ratable impairment was established.

In an unsigned report of March 26, 2012, Dr. Strain[9] opined that appellant had six percent impairment of the whole person for the cervical spine and zero percent impairment for the whole person for the lower back under Chapter 17 of the sixth edition of the A.M.A., *Guides*. As noted above, there is no schedule award available for impairment to the cervical spine and FECA does not provide for an impairment of the whole person.[10] FECA also excludes the back as an organ and, therefore, the back does not come under the provisions for payment of a schedule award.[11] Thus, the March 26, 2012 report is of little probative value. OWCP properly referred appellant for a second opinion evaluation on the advice of the medical adviser.

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

[7] A.M.A., *Guides* 533.

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

[9] Dr. Strain stated that the report was generated by a chiropractor. The Board has held that the opinion of a chiropractor regarding a permanent impairment of a scheduled extremity or other member of the body is beyond the scope of the statutory limitation of a chiropractor's services. *See Y.K.*, Docket No. 11-1623 (issued June 25, 2012). A chiropractor is limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. *See Paul Foster*, 56 ECAB 208 (2004).

[10] *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

[11] *Francesco C. Veneziani*, 48 ECAB 572 (1997). A schedule award is payable for a permanent impairment of the extremities that is due to a work-related back condition; *see Denise D. Cason*, 48 ECAB 530 (1997).

In his February 20, 2013 report, Dr. Kalisky properly calculated appellant's cervical radiculopathy and lumbar radiculopathy impairments. For the cervical radiculopathy, he properly utilized Table 1 of *The Guides Newsletter* and opined that she had class 0 or zero percent impairment for the right upper and left upper extremities for roots C5, C6, C7, C8 and T1, finding that there was no specific dermatomal distribution or pain or paresthesias, no objective valid motor or sensory findings of cervical radiculopathy on examination and objective studies were negative for cervical radiculopathy. For lumbar radiculopathy, Dr. Kalisky properly utilized Table 2 of *The Guides Newsletter* and opined that appellant had class 0 or zero percent impairment of the right and left lower extremities for roots L3, L4, L5 and S1, finding that there was no specific dermatomal distribution of pain or paresthesias and no objective valid motor or sensory findings of lumbar radiculopathy on examination. OWCP's medical adviser reviewed this report and agreed with Dr. Kalisky's findings and the application of the A.M.A., *Guides.*

The Board finds that the weight of the medical evidence does not establish a ratable impairment of either the bilateral upper or lower extremities as there is no medical evidence establishing impairment of the upper or lower extremities, scheduled members, as a result of appellant's accepted cervical and lumbar spine conditions.

On appeal, appellant contends that there is a problem with the nerves in her neck despite the fact that objective testing shows no nerve damage as she suffers from numbness and pain. As noted above, the medical evidence does not establish a ratable impairment of either the bilateral upper or lower extremities due to her accepted cervical and lumbar spine conditions.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not established entitlement to a schedule award to either of her bilateral upper or lower extremities.

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 20, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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