United States Department of Labor
Employees' Compensation Appeals Board

C.A., Appellant	)	
	)	**Docket No. 06-1276**
and	)	**Issued: December 29, 2006**
U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, Employer	)	

Appearances:
Appellant, pro se
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 May 15, 2006 appellant filed a timely appeal from a March 17, 2006 decision of an Office of Workers' Compensation Programs' hearing representative finding that she had no more than a six percent impairment of the left leg. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit issue of the case.

ISSUE

The issue on appeal is whether appellant has more than a six percent impairment of the left lower extremity for which she received a schedule award.

FACTUAL HISTORY

On August 7, 2001 appellant, then a 46-year-old flat sorter operator, filed a traumatic injury claim alleging that she was prepping mail from a cart and experienced pain in her neck, hands, shoulder, arm and back. The Office accepted bilateral shoulder impingement syndrome, bilateral rotator cuff tears, bilateral rotator cuff syndrome, lumbosacral radiculitis/neuritis,

bilateral sciatic nerve impingement and cervical radiculitis and paid appropriate compensation. Appellant did not stop work, but returned to a limited-duty position.[1]

Appellant came under the treatment of Dr. Windsor S. Dennis, a Board-certified orthopedic surgeon, who noted treating her from August 10 to October 15, 2001 for a work-related injury that caused neck, shoulder and back pain. In a report dated August 10, 2001, he diagnosed an acute strain of the lumbar sacral and iliolumbar regions and paraspinous muscle spasm of the lumbar area and advised that appellant could continue light-duty work. A magnetic resonance imaging (MRI) scan of the lumbar spine dated October 28, 2001 revealed degenerative disc and hypertrophic spondylosis change of the lumbar spine, posterior disc bulge at L1-2 and a posterior central disc broad-based prolapse at L4-5.

On October 14, 2003 appellant filed a claim for a schedule award.

The Office requested that appellant's treating physician provide an evaluation as to the extent of impairment pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[2] (A.M.A., *Guides*).

Appellant submitted an October 15, 2003 report from Dr. Dennis who found that she had eight percent impairment of the left leg in accordance with the A.M.A., *Guides*. Dr. Dennis calculated that she had an eight percent impairment to each leg for sensory deficit or pain in the distribution of the sciatic, common peritoneal, medial plantar and lateral plantar nerves under Table 17-37 of the A.M.A., *Guides*.[3] He noted that appellant had a sensory loss of 25 percent of Grade 4 for pain in the distribution of the sciatica under Table 16-10.[4] Impairment due to sensory loss was calculated as 4.25 percent impairment for the left leg by multiplying the 25 percent grade with the 17 percent maximum allowed for the sciatica nerve.[5] Dr. Dennis also noted that appellant had a maximum sensory loss of 25 percent of the left leg, Grade 4 for pain in the distribution of the common peroneal under Table 16-10.[6] Impairment due to sensory loss was calculated as 1.25 percent impairment for the left leg by multiplying the 25 percent grade with the 5 percent maximum allowed for the peroneal nerve. Dr. Dennis found that appellant had a maximum sensory loss of 25 percent of the left leg, Grade 4, pain in the distribution of the medial right and medial left nerve root under Table 17-37.[7] He calculated 1.25 percent impairment for the left leg by multiplying the 25 percent grade with the 5 percent maximum

[1] Appellant filed a prior claim for an occupational disease, alleging that her duties as a mail sorter caused a neck condition, in file number 16-2023513. The claim was denied by the Office and appealed to the Board, which in a decision dated April 5, 2001 (Docket No. 00-901), affirmed the decisions of the Office April 16 and September 10, 1999.

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

[3] *See* A.M.A., *Guides* 552, Table 17-37.

[4] *See* A.M.A., *Guides*, 482 Table 16-10.

[5] *See supra* note 3.

[6] *See supra* note 4.

[7] *See supra* note 3.

allowed for the medial nerve. Dr. Dennis also found that appellant had a sensory loss of 25 percent of the left leg, Grade 4, pain in the distribution of the lateral left nerve under Table 17-37.[8] Impairment due to sensory loss was calculated as 1.25 percent impairment for the left leg by multiplying the 25 percent grade with the 5 percent maximum allowed for the lateral nerve. Dr. Dennis opined that appellant sustained a total of eight percent impairment of the left leg based on sensory deficits.

On April 6, 2004 the Office referred Dr. Dennis's report and the case record to the Office's medical adviser who, in a report dated April 15, 2004, recommended referring appellant for a second opinion examination.

On April 30, 2004 the Office referred appellant for a second opinion to Dr. Stephen Kishner, a Board-certified orthopedic surgeon. In a report dated June 4, 2004, Dr. Kishner reviewed the records and performed a physical examination of appellant. He noted the history of her work-related injury. Dr. Kishner found that appellant had sensory loss, numbness and some dysesthesias that related to the superficial peroneal sensory area of the left foot, tendinitis of both shoulders and unrelated carpal tunnel syndrome. He opined that she sustained a 10 percent impairment of the left leg for sensory loss numbness and dysesthesias relating to the superficial peroneal sensory distribution.[9]

On June 23, 2004 the Office referred the medical record to the Office medical adviser. In a report dated June 29, 2004, he noted that maximum medical improvement occurred on June 4, 2004. The Office medical adviser opined that appellant had a total of six percent impairment of the left leg. She had three percent impairment of the left leg for sensory deficit or pain in the distribution of the superficial peroneal nerve under Table 17-37 of the A.M.A., *Guides*.[10] Appellant had a sensory loss of 60 percent of the left leg, Grade 3, for pain in the distribution of the superficial peroneal nerve Table 16-10.[11] Impairment due to sensory loss was calculated as 3 percent impairment for the left leg by multiplying the 60 percent grade with the 5 percent maximum allowed for the superficial peroneal nerve. Impairment due to dysesthesia was calculated as 3 percent for the left leg by multiplying the 60 percent grade with the 5 percent maximum allowed for the superficial peroneal nerve.[12] Using the Combined Values Chart on page 604 of the A.M.A., *Guides*, appellant had 6 percent impairment to the left leg. The medical adviser noted that Dr. Kishner did not grade the degree of nerve deficit; however, he correlated Dr. Kishner's findings of the nerve symptoms to the A.M.A., *Guides*.

In a decision dated June 14, 2004, the Office granted appellant a schedule award for six percent impairment of the left leg.

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[8] *See supra* note 3.

[9] *Supra* note 3 at 551, 552, Table 17-37, Figure 17-8; *see also* the Combined Values Chart, page 604.

[10] *See supra* note 3

[11] *See supra* note 4.

[12] *See supra* note 3.

On August 3, 2004 appellant requested a review of the written record. She submitted an electromyogram (EMG) dated April 15, 2003. It revealed bilateral lumbar radiculopathy around L4 affecting the posterior primary rami. Also submitted were duty status reports dated July 2 to October 29, 2004, noting that appellant could return to work subject to various restrictions.

In a decision dated January 12, 2005, the hearing representative vacated the June 14, 2004 schedule award and remanded the case for further development. He noted that the Office medical adviser incorrectly determined that appellant sustained a six percent impairment of the left lower extremity based on Table 16-10, page 482 of the A.M.A., *Guides*.

Appellant submitted several statements dated April 12, 2004 to February 25, 2005 contending that she was entitled to a greater schedule award. Also submitted were duty status reports dated December 8, 2004 to July 1, 2005.

On June 10, 2005 the Office referred appellant for a second opinion to Dr. John E. McLachlan, a Board-certified orthopedic surgeon. In a June 29, 2005 report, Dr. McLachlan reviewed the records and provided finding based on his examination. He opined that there was no evidence of disability of the arms or disability from the disc herniation. Dr. McLachlan diagnosed degenerative lumbar disc disease and chronic radiculopathy. He noted evidence of acromioclavicular (ACV) osteoarthritis bilaterally of a mild degree and radiographic evidence of rotator cuff tears which were not felt to be disabling. Dr. McLachlan noted that abnormal EMG findings of bilateral chronic L4 radiculopathy were not related to the lumbar strain, rather it was related to normal degenerative changes. Dr. McLachlan noted that the A.M.A., *Guides* provided impairment for loss of motion but found that appellant had a normal, active range of motion.[13] With regard to the lumbar spine, Dr. McLachlan noted that according to Table 15-3, page 384 of the A.M.A., *Guides*, appellant would fall into category one and, therefore, would have no impairment for the accepted work-related injuries. He indicated that she could continue to work light duty within certain restrictions.

On August 17, 2005 the Office referred the medical evidence to the Office's medical adviser. In a report dated August 29, 2005, the Office medical adviser indicated that Dr. McLachlan reviewed the abnormal EMG findings of bilateral chronic L4 radiculopathy. This was not related to the accepted lumbar strain but related to normal degenerative changes. The medical adviser concurred with Dr. McLachlan's determination that appellant had no impairment of the left leg from the accepted injury.

In a decision dated October 5, 2005, the Office denied appellant's request for a schedule award. It noted that she was previously paid a schedule award for six percent impairment of the left leg and the medical evidence did not support an increase in her impairment.

In a letter dated October 14, 2005, appellant requested a review of the written record but submitted no additional medical evidence.

In a decision dated March 17, 2006, the hearing representative affirmed the October 5, 2005 decision.

[13] Dr. McLachlan reference pages 477-79 of the A.M.A. *Guides* regarding lost motion.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[14] and its implementing regulation[15] 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 regulation as the appropriate standard for evaluating schedule losses.[16]

ANALYSIS

On appeal, appellant contends that she has more than six percent impairment of the left leg. The Office accepted her claim for bilateral shoulder impingement syndrome, bilateral rotator cuff tears, bilateral rotator cuff syndrome, lumbosacral radiculitis/neuritis, bilateral sciatic nerve impingement and cervical radiculitis. The issue before the Board is limited to her left leg impairment

The Office granted appellant a schedule award for six percent impairment of the left leg. She requested a hearing and the Office hearing representative directed further medical development. Appellant was referred for a second opinion to Dr. McLachlan. In a report dated August 29, 2005, Dr. McLachlan diagnosed degenerative lumbar disc disease and chronic radiculopathy. He noted abnormal EMG findings of bilateral chronic L4 radiculopathy but stated this was not related to the accepted lumbar strain. Rather the radiculopathy was related to normal degenerative changes. While the A.M.A. *Guides* provides impairment for loss of motion, he noted that appellant had a normal, active range of motion. With regard to the lumbar spine, he found no evidence of impairment to the left leg.[17] Dr. McLachlan concluded that appellant had no permanent impairment due to the accepted work-related injuries.

The Office medical adviser reviewed the findings of Dr. McLachlan. He stated that Dr. McLachlan found bilateral chronic L4 radiculopathy but opined that this was not related to the accepted lumbar strain. The Office medical adviser concurred in Dr. McLachlan's determination that appellant had no impairment of the left leg due to the accepted work-related injuries.

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[14] 5 U.S.C. § 8107.

[15] 20 C.F.R. § 10.404 (1999).

[16] *Id.*

[17] Dr. McLachlan noted that, under Table 15-3 at page 384 of the A.M.A., *Guides*, appellant had no impairment. However, any impairment found under this table, would not entitle appellant to a schedule award under the Act since Table 15-3 pertains to whole body impairment caused by a lumbar spine injury. The Board has held that no schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. Furthermore, no schedule award is payable for the back or the body as a whole. *See Jay K. Tomokiyo*, 51 ECAB 361 (2000).

The Board finds that the medical adviser properly reviewed the findings of Dr. McLachlan. He in determined that appellant was not entitled to a schedule award as there was no evidence of impairment greater than the six percent impairment of the left leg which was previously granted. There is no other medical evidence of record, conforming with the A.M.A., *Guides*, establishing that appellant has any greater impairment.

CONCLUSION

The Board finds that appellant is not entitled to an increased schedule award for her left leg.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 29, 2006
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