

**United States Department of Labor
Employees' Compensation Appeals Board**

M.H., Appellant

and

**U.S. POSTAL SERVICE, BULK MAIL
CENTER, Denver, CO, Employer**

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**Docket No. 06-2067
Issued: December 29, 2006**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 11, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 8, 2006 merit decision denying his request for a change of physicians and the July 28, 2006 decision denying his claim for schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly exercised its discretion in declining to authorize a change in treating physicians; and (2) whether appellant met his burden of proof to establish that he was entitled to a schedule award.

FACTUAL HISTORY

On January 25, 2006 appellant, then a 45-year-old mail handler, filed a traumatic injury claim alleging that he sustained a back and groin injury when he pulled a heavy container of mail

on that date. He stopped work on January 25, 2006 but began working in a limited-duty position shortly thereafter.

In a report dated January 31, 2005, Dr. Ann T. Dickson, an attending family practitioner, indicated that appellant reported pain in the low back and groin and diagnosed lumbar sprain and inguinal hernia. She indicated that she suspected that these diagnosed conditions represented two separate problems rather than radiation from the back to the groin.

The Office accepted that appellant sustained a lumbar sprain and left inguinal hernia. He received appropriate compensation related to his employment-related injury, including compensation for physical therapy.

On March 9, 2006 Dr. Janine C. Meza, an attending Board-certified orthopedic surgeon, performed a bilateral inguinal hernia repair with mesh, which was authorized by the Office.¹ Appellant stopped work prior to the surgery and returned to limited-duty work in mid April 2006.

Appellant received treatment from several physicians from the Concentra Medical Centers who were authorized by the Office. In a report dated February 28, 2006, Dr. James D. Fox, an attending Board-certified occupational medicine physician, diagnosed lumbar strain and inguinal hernia. He noted that appellant had mild, intermittent low back pain without any radicular symptoms. Appellant also received treatment from Dr. Mark C. Winslow, an attending Board-certified occupational medicine physician, who recommended that he continue performing limited-duty work. He continued to complain of pain in his low back and groin.

Appellant began working with Juli Fisk, a nurse consultant, authorized to provide services by the Office. Ms. Fisk indicated that on April 26, 2006 appellant requested a new treating physician because “this one does not listen to me” and would not relate his hip and leg pain to a workers’ compensation injury.²

On May 15, 2006 the Office received a letter in which appellant stated that he “would like to change doctors due to the fact that I don’t feel like I’m getting proper care.” He indicated that he had seen five different physicians since his initial visit on January 25, 2006 and that he would like to see Dr. Dale Kliner, a Board-certified family practitioner, from the Urgent Care group.

Appellant returned to his regular work for the employing establishment on May 9, 2006.

By decision dated June 8, 2006, the Office exercised its discretion and declined to authorize a change in treating physicians. The Office stated that it was “not the policy of this Office to transfer medical supervision unless there is some compelling reason to do so” and that

¹ Dr. Meza had indicated that appellant had been symptomatic on both sides of the groin but was primarily symptomatic on the left.

² Ms. Fisk indicated that on May 9, 2006 appellant advised her that Dr. Winslow was the physician who would not relate his hip problems to his work.

there was “no evidence to indicate that the treatment you are receiving at present is other than proper and adequate.”

On July 18, 2006 appellant filed a claim for a schedule award due to his accepted employment injuries. He resubmitted copies of previously submitted medical reports including the March 9, 2006 surgery report.

By decision dated July 28, 2006, the Office determined that appellant had not met his burden of proof to establish entitlement to schedule award compensation. It noted that he had not shown that he had employment-related permanent impairment of a scheduled member.

LEGAL PRECEDENT -- ISSUE 1

Under section 8103(a) of the Federal Employees’ Compensation Act,³ an employee is permitted the initial selection of a physician. However, Congress did not restrict the Office’s power to approve appropriate medical care after the initial choice of a physician. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office, therefore, has broad administrative discretion in choosing the means to achieve this goal within the limitation of allowing an employee the initial choice of a doctor. An employee who wishes to change physicians must submit a written request to the Office fully explaining the reasons for the request. The Office may approve the request in its discretion if sufficient justification is shown.⁴ The regulations indicate that requests that are often approved include those for “transfer of care from a general practitioner to a physician who specializes in treating conditions like the work related one or the need for a new physician when an employee has moved.”⁵

The only limitation on the Office’s authority is that of reasonableness.⁶ Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁷

ANALYSIS -- ISSUE 1

In a letter received by the Office, on May 15, 2006, appellant indicated that he wanted to transfer his care from the several physicians authorized by the Office to Dr. Kliner, a Board-

³ 5 U.S.C. § 8103(a).

⁴ See *Elizabeth Stanislav*, 49 ECAB 540 (1998); 20 C.F.R. § 10.316(a), (b).

⁵ 20 C.F.R. § 10.316(b).

⁶ *Daniel J. Perea*, 42 ECAB 214 (1990); *Pearlie M. Brown*, 40 ECAB 1090 (1989).

⁷ *Rosa Lee Jones*, 36 ECAB 679 (1985).

certified family practitioner. Regarding the reason for this request, he stated: “I don’t feel like I’m getting proper care.”⁸

The Board finds that the Office properly exercised its discretion in declining to authorize a change in treating physicians. Appellant was receiving treatment from several attending physicians authorized by the Office who were Board-certified in practice areas appropriate to his medical condition. He claimed that he was not receiving “proper care” but he provided no detailed statement explaining this assertion.⁹ The Office indicated in its June 8, 2006 decision there was “no evidence to indicate that the treatment you are receiving at present is other than proper and adequate.” Under these circumstances, it has not been demonstrated that the Office’s decision to deny the change of physicians was unreasonable. As such, appellant has failed to establish that the Office abused its discretion by refusing to authorize a change of physicians on the basis of inadequate treatment or improper care.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking compensation under the Act has the burden of establishing the essential elements of his claim, including that he sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.¹⁰ The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.¹¹ A schedule award is not payable for the loss or loss of use, of a part of the body that is not specifically enumerated under the Act. Neither the Act nor its implementing regulations provides for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of organ under the Act.¹² A claimant may be entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the neck, shoulders or spine.¹³

⁸ Ms. Fisk, a nurse consultant, indicated that on April 26, 2006 appellant requested a new treating physician because “this one does not listen to me” and would not relate his hip and leg pain to a workers’ compensation injury. Appellant later told Ms. Fisk that Dr. Winslow, an attending Board-certified occupational medicine physician, was the person who would not relate his hip problems to his work.

⁹ Although appellant asserted to his nurse consultant that an attending physician improperly refused to relate his hip and leg pain to his work, he did not submit medical evidence to support this claim. In fact, the medical evidence of record provides no indication that appellant had employment-related hip and leg pain.

¹⁰ See *Bobbie F. Cowart*, 55 ECAB 476 (2004). In *Cowart*, the employee claimed entitlement to a schedule award for permanent impairment of her left ear due to employment-related hearing loss. The Board determined that appellant did not establish that an employment-related condition contributed to her hearing loss and, therefore, it denied her claim for entitlement to a schedule award for the left ear.

¹¹ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

¹² *James E. Mills*, 43 ECAB 215, 219 (1991); *James E. Jenkins*, 39 ECAB 860, 866 (1990).

¹³ *Thomas J. Engelhart*, 50 ECAB 319, 320-21 (1999).

The schedule award provision of the Act¹⁴ and its implementing regulation¹⁵ 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.¹⁶

ANALYSIS -- ISSUE 2

Appellant claimed that he was entitled to schedule award compensation due to his employment injuries a low back sprain and left inguinal hernia. The Board finds that appellant did not submit medical evidence showing that he was entitled to such schedule award compensation.

The record does not contain medical evidence establishing that appellant has permanent impairment of a scheduled member, whether the impairment originates in a scheduled member or extends from a nonscheduled member into a scheduled member. Although appellant has an accepted injury of the back and spine, the Board has held that a schedule award may not be received for the back or spine.¹⁷ Appellant suggested that he had pain which radiated from his back and groin into his hips and lower extremities, but the record does not contain medical evidence supporting this assertion. The medical evidence shows that appellant's pain was located in his low back and groin. Appellant did not submit any medical evidence which shows, under the relevant standards of the A.M.A., *Guides*, that he had permanent impairment of his lower extremities which originated in the extremities or extended into them from the low back or groin. For these reasons, appellant did not show that he was entitled to schedule award compensation.

CONCLUSION

The Board finds that the Office properly exercised its discretion in declining to authorize a change in treating physicians. The Board finds that appellant did not meet his burden of proof to establish that he was entitled to a schedule award.

¹⁴ 5 U.S.C. § 8107.

¹⁵ 20 C.F.R. § 10.404 (1999).

¹⁶ *Id.*

¹⁷ See *supra* notes 12 and 13 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' July 28 and June 8, 2006 decisions are affirmed.

Issued: December 29, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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