United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 06-1553**
	)	**Issued: October 10, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Harwood Heights, IL, Employer	)	

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 27, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 20, 2005 and April 12, 2006 merit decisions regarding his entitlement to 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.

ISSUE

The issue is whether appellant met his burden of proof to establish that he is entitled to schedule award compensation due to his December 4, 2001 employment injury.

FACTUAL HISTORY

On December 5, 2001 appellant, then a 47-year-old distribution/window clerk, filed a traumatic injury claim alleging that he sustained injury when he lifted a heavy tub of mail at work on December 4, 2001. Appellant did not stop work, but began working in a light-duty position. The Office accepted that he sustained a lumbar strain and lumbar radiculopathy

affecting the right lower extremity. Appellant continued receiving conservative medical treatment for his low back and right buttock and leg pain complaints.

In a report dated April 28, 2003, Dr. Paul T. Prinz, an attending Board-certified neurosurgeon, stated that appellant reported experiencing pain in his central neck, right low back and right buttock. Dr. Prinz indicated that the results of sensory response and manual muscle testing of the lower extremities were normal and that straight leg testing was negative in the sitting position. He diagnosed resolved central neck pain, central low back pain and degenerative disc disease at L2-3, L3-4, C5-6 and C6-7.

In June 2003, appellant contended that he was entitled to schedule award compensation due to his December 4, 2001 employment injury.

In a letter dated June 30, 2003, the Office requested that Dr. Prinz provide an opinion regarding whether appellant had employment-related permanent impairment of his lower extremities. The record contains a copy of the June 30, 2003 letter containing unsigned handwritten notations, which apparently detail range of motion findings, including right hip flexion of 80 degrees, left hip flexion of 80 degrees, "right flexion" of 125 degrees, "left flexion" of 140 degrees, "right knee" of 130 degrees and "left knee" of 140 degrees.

In a report dated October 9, 2003, Dr. Leonard R. Smith, an attending Board-certified orthopedic surgeon, stated that appellant exhibited no objective evidence of a radiculopathy of the lower extremities and noted, "If there was, it has improved." Dr. Smith reported range of motion findings for the back and noted that under the relevant standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) there was "no motor weakness noted, nor any neurological findings." He stated:

> "Also, lateral flexion of 10 degrees is equal to a loss of 1 percent of the person as a whole and lateral bending 10 degree loss is 1 percent of the person as a whole…. Additional loss of function based upon pain is a two percent loss of the person as a whole for mild to moderate pain for a total of four percent, translated to the lower extremities this would be a loss of four percent of each of the lower extremities."

In a report dated May 17, 2004, Dr. Robert W. Molnar, an attending osteopath, stated that appellant reported pain in and around the back and right buttock which "occasionally possibly" went into the posterior portion of the right thigh. Dr. Molnar indicated that appellant was able to forward flex with his outstretched hands approximately to his knees without apparent difficulty. He stated that on palpation appellant reported vague diffuse lumbosacral midline pain and indicated that "[n]o radicular symptoms were elicited." Dr. Molnar noted that appellant exhibited negative results upon straight leg testing, that he walked with a normal gait and that sensory examination yielded normal results. In a report dated July 11, 2005, Dr. Molnar reported that appellant presently had no pain or discomfort and continued to exhibit negative results upon straight leg testing.

The Office requested that Dr. Ravi K. Ponnappan, a Board-certified orthopedic surgeon and Office district medical adviser, provide an opinion regarding whether appellant had any permanent impairment of his lower extremities. In a report dated August 10, 2005, Dr. Ponnappan concluded that appellant did not have a permanent impairment of either lower extremity. He made note that the findings in Dr. Molnar's reports were essentially normal and stated:

> "The following calculations will be referenced from the [A.M.A., *Guides* (5th ed. 2001)]. It should be noted that according to the [Federal Employees' Compensation Act], impairment cannot be awarded of the axial skeleton or of the person as a whole, only of the extremities. With that in mind, this claimant has no documented subjective or physical examination findings of lower extremity impairment.
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> "No award is given secondary to lack of impairment. [Maximum medical improvement] will by July 11, 2005, the date of last clinic evaluation."

By decision dated October 20, 2005, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he was entitled to schedule award compensation for an employment-related medical condition.

Appellant requested an oral hearing before an Office hearing representative which was held on March 3, 2006. He testified that the medical evidence showed that he had an employment-related radiculopathy, which affected his lower extremities.

By letter dated March 7, 2006, the Office requested that appellant obtain an opinion from his attending physician regarding whether he had permanent impairment of his lower extremities.

Appellant submitted the findings of January 25, 2006 magnetic resonance imaging (MRI) scan testing, which showed mild L2-3 disc degeneration and mild to moderate L2-S1 facet degenerative changes with no disc protrusion and no significant canal or neural foraminal compromise. The findings of February 2, 2006 nerve conduction studies showed results consistent with "chronic L4 and L5 biradiculopathy on the right." Appellant also submitted several reports of Andrea Iantorno-Buckley, an attending registered nurse.

By decision dated and finalized April 12, 2006, the Office hearing representative affirmed the Office's October 20, 2005 decision.

LEGAL PRECEDENT

An employee seeking compensation under the Act[1] 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.[2]

Under the schedule award provisions of the Act, compensation for permanent impairment is limited to the specific members or functions of the body enumerated under section 8107 and the implementing federal regulations.[3] No schedule award is payable for a member, function or organ not specified in the Act or federal regulations.[4] The Act specifically excludes the back from the definition of "organ."[5]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

ANALYSIS

The Office accepted that on December 4, 2001 appellant sustained a lumbar strain and lumbar radiculopathy affecting the right lower extremity. Appellant later claimed that he was entitled to schedule award compensation due to his December 4, 2001 employment injury. The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained any permanent impairment to his lower extremities.

Appellant submitted an October 9, 2003 report in which Dr. Leonard R. Smith, an attending Board-certified orthopedic surgeon, reported range of motion findings for his back. Dr. Smith stated: "[L]ateral flexion of 10 degrees is equal to a loss of 1 percent of the person as a whole and lateral bending 10 degree loss is 1 percent of the person as a whole…. Additional

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[1] 5 U.S.C. §§ 8101-8193.

[2] *See Bobbie F. Cowart*, 55 ECAB ___ (Docket No. 04-1416, issued September 30, 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.

[3] *See* 5 U.S.C. § 8107(c) and 20 C.F.R. § 10.404(a).

[4] *See Thomas Martinez*, 54 ECAB 623 (2003).

[5] *Id. See also* 5 U.S.C. § 8101(19).

[6] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

loss of function based upon pain is a two percent loss of the person as a whole for mild to moderate pain for a total of four percent, translated to the lower extremities this would be a loss of four percent of each of the lower extremities." Although Dr. Smith provided some impairment ratings, his opinion is of limited probative value on the relevant issue of the present case in that he did not provide any statement that appellant's lower extremity problems were due to the December 4, 2001 employment injury.[7] Moreover, Dr. Smith had indicated that on examination that appellant exhibited no objective evidence of a radiculopathy of the lower extremities. As noted a schedule award is not payable for permanent impairment of the back[8] or of the whole person.[9]

The record contains unsigned handwritten notations which apparently detail range of motion findings, including right hip flexion of 80 degrees, left hip flexion of 80 degrees, "right flexion" of 125 degrees, "left flexion" of 140 degrees, "right knee" of 130 degrees and "left knee" of 140 degrees. These notations were made on a June 30, 2003 letter in which the Office requested that Dr. Prinz, an attending Board-certified neurosurgeon, provide an opinion regarding whether appellant had employment-related permanent impairment of his lower extremities. In addition to the fact that the notations have limited probative value due to their uncertain provenance,[10] they do not contain any opinion regarding the cause of appellant's lower extremity condition. Appellant also submitted the findings of February 2, 2006 nerve conduction studies which showed results consistent with "chronic L4 and L5 biradiculopathy on the right," but there was no indication that these findings were related to his December 4, 2001 employment injury.[11] Moreover, these documents did not contain any specific impairment ratings under the relevant standards of the A.M.A., *Guides*.

The record contains other medical evidence which shows that appellant did not have permanent impairment of his lower extremities due to his December 4, 2001 employment injury. In reports dated May 17 and July 11, 2004, Dr. Molnar, an attending osteopath, indicated that his examination of appellant revealed "[n]o radicular symptoms" of the lower extremities on palpation. He further noted that appellant exhibited negative results upon straight leg testing, that he walked with a normal gait and that sensory examination yielded normal results. In a report dated August 10, 2005, Dr. Ponnappan, a Board-certified orthopedic surgeon and Office district medical adviser, concluded that appellant did not have a permanent impairment of either lower extremity. He noted that appellant had no documented subjective or physical examination findings of lower extremity impairment.

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[7] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

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

[9] *See Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

[10] Only the reports of a physician can be considered by the Board in adjudicating the issue of causal relationship. *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993). Appellant also submitted reports of an attending nurse, but a nurse would not be considered to be a physician under the Act. *Bertha L. Arnold*, 38 ECAB 282, 285 (1986).

[11] The Board also notes that MRI scan testing of appellant's lumbar spine from around the same time did not show any significant nerve impingement at L4 and L5.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he is entitled to schedule award compensation due to his December 4, 2001 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 12, 2006 decision is affirmed.

Issued: October 10, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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