United States Department of Labor
Employees' Compensation Appeals Board

J.J., Appellant	)	
	)	**Docket No. 07-348**
and	)	**Issued: June 1, 2007**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Oak Creek, WI, 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 November 20, 2006 appellant filed a timely appeal of the October 11, 2006 merit decision the Office of Workers' Compensation Programs which denied his claim for a schedule award. Pursuant to 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 that he has any permanent impairment related to his accepted injury.

FACTUAL HISTORY

On June 3, 1999 appellant, then a 45-year-old mail handler, filed an occupational disease claim alleging that he developed low back pain after loading and carrying bulk mail. His claim was accepted for lumbosacral strain and expanded to include permanent aggravation of degenerative disc disease. Appropriate compensation benefits were paid. Appellant did not stop work.

Appellant submitted a June 22, 1998 report from Dr. Michael Yoshida, Board-certified in physical medicine and rehabilitation. He noted that appellant's history was significant for back pain which developed in 1976 while on active service in the military, a bayonet wound in 1988, a ruptured Achilles tendon which occurred while playing basketball in 1994 and degenerative disc disease which developed in 1995. He diagnosed low back pain and degenerative disc disease. Reports from Dr. Shakti Sabharwal, a Board-certified, internist, from July 6, 1999 to January 30, 2002 diagnosed lumbar spine degenerative disc disease and chronic low back pain. He indicated that appellant would likely have permanent residuals. Reports from other healthcare providers also noted appellant's status and work restrictions.

In a decision dated April 26, 2002, the Office denied appellant's claim for compensation for the period February 9 to 12, 2002. On August 5, 2002 the Office denied modification of the April 26, 2002 decision.

Appellant subsequently submitted treatment notes from facilities operated by the Department of Veterans Affairs dated February 9, 2001 to March 7, 2005 which noted his treatment for bilateral carpal tunnel syndrome, neck pain, degenerative disc disease of the cervical spine and canal, foraminal narrowing at C5-7 and a herniated disc of the lumbar spine. Also submitted was a magnetic imaging resonance (MRI) scan of the lumbar spine dated February 5, 2004 which revealed multilevel degenerative disc disease with multilevel canal narrowing at C5-6 and C6-7 and multilevel foraminal narrowing at C5-6 and C6-7. Appellant submitted a Veterans Affair (VA) disability rating dated November 15, 2004 which granted him a 40 percent disability rating for degenerative disc disease, a 30 percent rating for left Achilles tendon rupture, a 10 percent rating for a left distal thigh bayonet wound and a 10 percent rating for narcolepsy. A VA rating dated December 16, 2005 granted an additional 70 percent rating for depression and a 20 percent rating for narcolepsy for a total rating of 90 percent effective November 1, 2004.

On March 28, 2006 appellant filed a claim for a schedule award.

By letter dated May 12, 2006, the Office requested that appellant's physician provide an impairment rating of his lower extremities in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[1] (A.M.A., *Guides*).

Appellant submitted an August 7, 2006 report from Dr. Michael W. Lischak, Board-certified in physical medicine and rehabilitation. He diagnosed left Achilles tendon rupture, left distal thigh bayonet wound and left knee arthritis. Dr. Lischak noted that appellant sustained 15 percent impairment for gait derangement in accordance with Figure 17-10, page 561 of the A.M.A., *Guides*. In a report dated August 18, 2006, he indicated that appellant's case was complicated by the preexistence of a number of back and lower extremity injuries related to his prior military service and the impairment calculation was reflective of appellant's overall impairment irrespective of cause. Dr. Lischak noted that appellant had a service connected degenerative disc disease with low back pain, Achilles tendon rupture and a left distal thigh bayonet wound and also sustained a worker's compensation injury to the low back in May 1999. He noted that the VA provided a disability rating of 40 percent for degenerative disc disease, 30

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

percent for the Achilles tendon rupture, 10 percent for the bayonet wound and 10 percent for a left knee injury. Dr. Lischak noted that due to the range of injuries to appellant's lower back and left lower extremity, he rated appellant under Table 17-5, page 529 of the A.M.A., *Guides.* He noted that appellant had an antalgic gait with a shortened stance due to moderate to advanced arthritis changes to the left knee and left ankle and opined that in accordance with the A.M.A., *Guides* appellant sustained a 15 percent permanent impairment of both lower extremities.

In a report dated September 23, 2006, the Office medical adviser determined that appellant was not entitled to a permanent impairment rating for the lower extremity as a result of his accepted work-related injury. He advised that appellant was granted a 40 percent award from the VA effective November 15, 2004. Dr. Lischak indicated that appellant had chronic low back pain with radicular symptoms in the left leg prior to his employment and it was unclear how appellant's symptoms changed since his employment at the employing establishment. The Office medical adviser noted that the treating physician did not clearly address how appellant's work-related condition caused any ratable impairment and, therefore, appellant was not entitled to a schedule award.

By decision dated October 11, 2006, the Office denied appellant's claim for a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] 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.[4]

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.[5] As neither the Act nor its regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole, no claimant is entitled to such a schedule award.[6] The Board notes that section 8101(19) specifically excludes the back from the definition of "organ."[7] However, a claimant

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] *Id.*

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

[6] *See Jay K. Tomokiyo*, 51 ECAB 361 (2000).

[7] 5 U.S.C. § 8101(19).

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.[8]

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.[9]

ANALYSIS

On appeal, appellant argues that he has 15 percent permanent impairment of the lower extremities as found by Dr. Lischak. The Office accepted his claim for lumbosacral strain and permanent aggravation of degenerative disc disease. As noted, the Act does not permit a schedule award based on impairment to the back or spine. Appellant may receive a schedule award for impairment to the lower extremities if such impairment is established as being due to his accepted back condition.

The Board has carefully reviewed Dr. Lischak's reports. He determined that appellant sustained a 15 percent permanent impairment of the lower extremities. However, Dr. Lischak did not adequately explain how he reached this rating in accordance with the relevant standards of the A.M.A., *Guides*.[10] He failed to provide a history of appellant's work-related injury or provide medical reasoning to support how any impairment was caused or aggravated by the accepted employment injury. Although Dr. Lischak opined that appellant sustained a 15 percent impairment rating for gait derangement, he failed to note findings upon physical examination or provide calculations in support of this determination. Dr. Lischak noted that appellant had an antalgic gait with a shortened stance caused by arthritic changes to the left knee and left ankle. Under Figure 17-10, page 561 of the A.M.A., *Guides* he stated that appellant sustained a 15 percent permanent impairment of the lower extremities. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[11] Dr. Lischak opined that appellant had a work-related lower back injury which "may" be impairing the lower extremities; however, he couched his opinion in speculative terms. The Board has held that medical opinions which are speculative or equivocal in character are of diminished probative value.[12] The Board finds that Dr. Lischak did not sufficiently explain how appellant's

[8] *Thomas J. Engelhart*, *supra* note 5.

[9] *Veronica Williams*, 56 ECAB ___ (Docket No. 04-2120, issued February 23, 2005).

[10] *See Tonya R. Bell*, 43 ECAB 845, 849 (1992).

[11] *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[12] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

impairment was caused or aggravated by his accepted work injury and he did not properly follow the A.M.A., *Guides* in rating impairment.[13]

The Office medical adviser properly reviewed the medical record and in a report dated September 23, 2006, found no basis on which to attribute permanent impairment based on the findings presented by Dr. Lischak to a scheduled member of the body.[14] He indicated that appellant had chronic low back pain with radicular symptoms in the left leg prior to his employment with the employing establishment and it was unclear how his symptoms changed since his employment with the employing establishment. The medical adviser noted that the treating physician did not clearly demonstrate how appellant's work-related condition caused any ratable impairment. He found no basis under the A.M.A., *Guides* to attribute any ratable impairment to appellant's accepted employment conditions.

Consequently, appellant has not established entitlement to a schedule award for permanent impairment caused or aggravated by his accepted employment conditions.

[13] *See Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

[14] The Board notes that it is appropriate for an Office medical adviser to review the clinical findings of the treating physician to determine the permanent impairment. *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.5(c) (March 1994); *Richard R. LeMay*, 56 ECAB ___ (Docket No. 04-1652, issued February 16, 2005).

CONCLUSION

The Board finds that the Office properly denied appellant's claim for a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 11, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2007
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