United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 06-2150**
	)	**Issued: March 21, 2007**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Tucson, AZ, 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 September 26, 2006 appellant filed a timely appeal of a September 6, 2006 decision of the Office of Workers' Compensation Programs which granted a schedule award for a two percent impairment of the left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUE

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

FACTUAL HISTORY

On January 30, 2004 appellant, a 42-year-old transportation security screener, filed a traumatic injury claim alleging that on that date she injured her back while picking up a bag on

the screening belt. The Office accepted the claim for lumbosacral strain which was later expanded to include aggravation of degenerative disc changes at L5-S1 and L4-5.[1]

Appellant filed claims for a schedule award on October 26, 2004 and August 7 and October 21, 2006. She submitted a June 5, 2006 report and impairment rating by Dr. Dennis G. Sollom, an examining Board-certified physiatrist who reviewed the history of injury and provided findings on examination. Dr. Sollom noted "some radiation of pain from the low back or buttock down to the let leg." He reported left straight leg raising "produces some complaints of back and leg pain after about 60 degrees of elevation at the leg." Dr. Sollum diagnosed degenerative disc changes at L4-5 and L5-S1 and mechanical low back pain and that appellant reached maximum medical improvement on June 5, 2006. He reported finding no hard objective neurologic deficits on examination. Dr. Sollom concluded that there was possibly "some mild irritation with the sciatic nerve" as a result of her mechanical low back pain. He also noted that an "injured ligament and/or tendon in the low back or buttock area can refer discomfort down the leg." Dr. Sollom opined that appellant had a two percent left leg impairment based on pain and discomfort.

The Office referred the medical record to an Office medical adviser. In an August 17, 2006 report, the Office medical adviser reviewed the record and opined that appellant reached maximum medical improvement on June 5, 2006. He noted medical reports in the record and appellant's medical history. Based on Dr. Sollom's findings and the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[2] the Office medical adviser recommended that appellant be awarded a schedule award for a two percent permanent impairment to her right leg. He determined that she had a Grade 4 pain/sensory deficits in the distribution of the sciatic nerve using Table 17-37 on page 552 and Table 16-10 on page 482.

By decision dated September 6, 2006, the Office issued appellant a schedule award for a two percent permanent impairment of her left lower extremity. The award covered 5.76 weeks of compensation and ran from the period June 5 to July 15, 2006.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[3] and section 10.404 of the implementing federal regulation,[4] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure

[1] Appellant resigned from the employing establishment effective February 27, 2004.

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

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

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.[5] The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[6]

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulation.[7] As neither the Act nor its regulation 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.[8] The Board notes that section 8109(19) specifically excludes the back from the definition of organ.[9] However, 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.[10]

ANALYSIS

The Office accepted appellant's claim for lumbosacral strain and aggravation of degenerative disc changes at L5-S1 and L4-5 and based her schedule award for two percent impairment to the left lower extremity on the August 17, 2006 report of an Office medical adviser. The Office's procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from the attending physician is obtained.[11]

In a June 5, 2006 report, Dr. Sollom determined appellant's lower extremity impairment as two percent, but failed to explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.[12] He advised that appellant had a two percent impairment of the left lower extremity as a result of the work-related injury. Dr. Sollom failed to

[5] *Billy B. Scoles*, 57 ECAB ___ (Docket No. 05-1696, issued December 7, 2005); *James R. Mirra*, 56 ECAB ___ (Docket No. 05-998, issued September 6, 2005).

[6] *D.R.*, 57 ECAB ___ (Docket No. 06-668, issued August 22, 2006); *Carol A. Smart*, 57 ECAB ___ (Docket No. 05-1873, issued January 24, 2006).

[7] *See Anna V. Burke*, 57 ECAB ___ (Docket No. 06-462, issued April 10, 2006); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

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

[9] 5 U.S.C. § 8107; *see also Richard R. LeMay*, 56 ECAB ___ (Docket No. 04-1652, issued February 16, 2005); *Phyllis F. Cundiff*, 52 ECAB 439 (2001); *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

[10] 5 U.S.C. § 8109(c); *see Veronica Williams*, 56 ECAB ___ (Docket No. 04-2120, issued February 23, 2005).

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

[12] *Laura Heyen*, 57 ECAB ___ (Docket No. 05-1766, issued February 15, 2006) (Board precedent is well settled that, when an attending physician's report gives an estimate of impairment but does not address how the estimate is based upon the A.M.A., *Guides*, the Office is correct to follow the advice of its medical adviser or consultant where he or she has properly applied the A.M.A., *Guides*).

refer to any specific tables or charts in the A.M.A., *Guides* or to provide his calculations in support of this determination.

In an August 17, 2006 report, the Office medical adviser compared the findings of Dr. Sollom with the provisions of the A.M.A., *Guides* pertaining to impairments due to nerve deficits under Table 17-37 and Table 16-10.[13] In arriving at his impairment calculations under Table 16-10, the Office medical adviser assigned a Grade 4 sensory deficit for the left lower extremity. Table 16-10, provides a Grade 4 sensory deficit for distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain that is forgotten during activity and allows a 1 to 25 percent sensory deficit. The Office medical adviser did not provide any explanation for why a Grade 4 sensory deficit classification was selected.[14] He also failed to explain how his proposed impairment rating related to the physical findings on which he relied. While he referred to Table 16-10 and Table 17-37 in assessing appellant's impairment, the Office medical adviser failed to provide an adequate narrative to explain his impairment rating. In identifying the affected nerve in Table 17-37, page 552 of the A.M.A., *Guides*, the Office medical adviser did not provide the corresponding percentage of impairment contributed to the left lower extremity. Similarly, he also did not discuss the percentage of impairment used for a Grade 4 sensory deficit, Table 16-10, page 482 of the A.M.A., *Guides*, in determining the percentage of impairment of the left lower extremity. In view of the Office medical adviser's failure to adequately explain how his impairment rating was reached in accordance with the relevant standards of the A.M.A., *Guides*, the case requires further development to determine the extent of impairment of appellant's left lower extremity.

On remand, the Office should further develop the medical evidence and obtain an opinion on appellant's impairment of the left lower extremity that conforms to the Office's procedures and the A.M.A., *Guides*. Following this and any further development as deemed necessary, the Office shall issue a *de novo* decision on appellant's schedule award claim.

CONCLUSION

The Board finds that the case is not in posture for decision and will be remanded for further development of the medical evidence. After such further development as the Office deems necessary, it should issue an appropriate decision.

[13] A.M.A., *Guides* (5th ed.), Table 17-37, Impairments Due to Nerve Deficits, page 552 and Table 16-10, Determining Impairments of the Upper Extremity Due to Sensory Deficits or Pain Resulting From Peripheral Nerve Disorders, page 482.

[14] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (Office procedures provide that an Office medical adviser, in providing an opinion concerning impairment should provide rationale for the percentage of impairment specified).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Worker' Compensation Programs dated September 6, 2006 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: March 21, 2007
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