

Appellant underwent periodic physical therapy treatments and reported having pain in her low back which radiated into her left lateral thigh. On September 11, 2006 Dr. Karen M. Wooten, an attending Board-certified physical medicine and rehabilitation physician, diagnosed left-sided mechanical low back pain and left meralgia paresthetica. On October 4, 2006 appellant filed a claim alleging entitlement to schedule award compensation. On December 8, 2006 the Office requested that appellant submit medical evidence in support of her schedule award claim.¹

On September 8, 2007 Dr. Anthony J. Russo, an attending Board-certified orthopedic surgeon, indicated that appellant complained of low back pain with radiation into the lateral left thigh. Appellant indicated that she did not experience any back pain prior to her January 31, 2006 injury and denied having any symptoms below the left thigh, weakness of the legs or difficulty in walking. Dr. Russo stated that on examination appellant exhibited back motion which was limited by low back pain and indicated that sensation to light touch and pinprick was intact in her legs, except in the left lateral thigh. Muscle strength testing of her legs showed 5/5 strength, except for 4/5 strength in the left anterior tibialis, quadriceps and hamstring. He diagnosed lumbar strain related to the January 31, 2006 injury and preexisting lumbar degenerative disc disease which was temporarily aggravated by the January 31, 2006 injury but had since returned to its baseline condition. Dr. Russo stated, “While MRI [scan] does demonstrate more involvement of the neural foramen on the left side versus the right side, the patient’s symptoms in the left lower extremity do not fit a dermatomal or myotomal pattern. Thus, it is unclear and unlikely that she has a true radiculopathy.” He concluded that appellant did not have any permanent impairment of her legs.

On April 3, 2008 Dr. Kenneth D. Sawyer, a Board-certified orthopedic surgeon serving as an Office medical adviser, stated that appellant had been diagnosed with meralgia paresthetica, a neuropathic pain involving the lateral femoral cutaneous nerve which was usually unrelated to lumbar spine pathology. He discussed the September 8, 2007 report of Dr. Russo and concluded that appellant did not have any permanent impairment of her legs.

In an April 8, 2008 decision, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she has permanent impairment of her legs which entitles her to schedule award compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act² and its implementing regulation³ 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

¹ Appellant submitted the results of August 9, 2007 magnetic resonance imaging (MRI) scan which showed mild bulging in her L2-3, L3-4 and L4-5 discs but no disc herniation. She also submitted several reports detailing her chiropractic treatment.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴ It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.⁵

ANALYSIS

The Office accepted that appellant sustained a lumbar strain and lumbosacral radiculopathy on January 31, 2006. Appellant filed a claim alleging entitlement to schedule award compensation due to this injury.

The Board finds that appellant did not submit medical evidence establishing that she has permanent impairment of her legs which entitles her to schedule award compensation. In fact, the only medical evidence addressing appellant's claimed leg impairment contains a clear opinion that appellant did not have permanent impairment of her legs. On September 8, 2007 Dr. Russo, an attending Board-certified orthopedic surgeon, indicated that appellant had some mild sensory and strength losses in her left leg but determined that they were not related to her January 31, 2006 injury.⁶ He concluded that appellant did not have any permanent impairment of her legs. On April 3, 2008 Dr. Sawyer, a Board-certified orthopedic surgeon serving as an Office medical adviser, also determined that appellant did not have any permanent impairment of her legs.

Appellant was provided an opportunity to submit evidence showing permanent impairment of her legs but failed to do so. Therefore, the Office properly denied her schedule award claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has permanent impairment of her legs which entitles her to schedule award compensation.

⁴ *Id.*

⁵ See *Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b. (June 1993). This portion of Office procedure provides that the impairment rating of a given scheduled member should include "any preexisting permanent impairment of the same member or function."

⁶ The medical reports of record reveal that appellant had preexisting mild degenerative disc disease of her low back, but there is no indication that she had any preexisting impairment related to this condition. Appellant reported that she did not have any back pain prior to her January 31, 2006 injury. Therefore, she would not be entitled to a rating related to a preexisting impairment. See *supra* note 5 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 8, 2008 decision is affirmed.

Issued: December 17, 2008
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