United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant	)	
and	)	**Docket No. 07-2095**
	)	**Issued: February 15, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Carol Stream, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2007 appellant filed a timely appeal from a May 31, 2007 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained greater than a one percent impairment of the left leg, for which she received a schedule award.

FACTUAL HISTORY

This is appellant's second appeal before the Board in this case. By decision dated January 6, 2003,[1] the Board affirmed an April 23, 2002 decision of the Office denying appellant's claim for a schedule award for the left lower extremity related to an accepted left inguinal hernia. The Board found that the opinion of Dr. Marcelo E. Virgili, an attending Board-certified orthopedic surgeon, was insufficient to establish a permanent impairment to the left

[1] Docket No. 02-1646 (issued January 6, 2003).

lower extremity. The law and the facts of the case as set forth in the Board's prior decision and order are hereby incorporated by reference.

During the pendency of prior appeal, appellant submitted reports and work restriction forms dated from September 18 to December 20, 2002 related to a postsurgical scar revision and neuroma removal in August 2002.

In an August 1, 2003 letter, Dr. Virgili provided a history of injury and treatment. He diagnosed chronic inguinodynia. Appellant underwent surgery on July 8, 2004 to remove a left inguinal neuroma. She was released to full duty as of August 10, 2004. Dr. Virgili limited appellant to restricted duty for intermittent periods through September 2, 2005.[2] He submitted periodic reports through February 9, 2005 diagnosing chronic postsurgical inguinal pain.

On March 20, 2007 appellant claimed a schedule award. She submitted a January 18, 2007 report from Dr. Jacob Salomon, an attending general surgeon, and Dr. Lafeyette Singleton, an attending Board-certified neurologist. Dr. Salomon and Dr. Singleton reviewed the medical record and noted appellant's chronic inguinal pain. On examination, they noted decreased pinprick sensation along the left anterior thigh, lateral thigh and groin. There was weakness of left hip flexors, Grade 4 weakness in the left quadriceps and weakness of left knee flexion. Range of motion was full. Dr. Salomon and Dr. Singleton diagnosed status post left inguinal hernia repair with mesh, later removal of mesh and removal of neuroma. They opined that removing the neuroma caused motor and sensory deficits in the left femoral nerve demonstrable on an electromyelogram obtained by Dr. Singleton.[3] Referring to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, "A.M.A. *Guides*"), Dr. Salomon and Dr. Singleton explained that sensory impairment of the femoral nerve was rated according to Table 16-10, page 482[4] and Table 17-37, page 552.[5] According to Table 17-37, the maximal percentage for femoral nerve dysfunction was two percent. Dr. Salomon and Dr. Singleton characterized appellant's pain as Grade 3, a 50 percent deficit according to Table 16-10. Multiplying the 2 percent impairment for the femoral nerve by 50 percent resulted in a 1 percent impairment of the left lower extremity due to pain and loss of sensation.

Dr. Salomon and Dr. Singleton found an additional impairment due to motor weakness. According to Table 17-37, the maximum percentage of impairment for loss of motor function of the femoral nerve is 37 percent. Appellant had a Grade 4 weakness in the left quadriceps against

[2] By decision dated November 29, 2005, the Office denied appellant's claim for a recurrence of disability commencing February 9, 2005 on the grounds that causal relationship was not established. This decision is not before the Board on the present appeal as it was issued more than one year prior to August 10, 2007, the date appellant filed her appeal.

[3] The electromyelogram (EMG) report is not of record.

[4] Table 16-10, page 482 of the fifth edition of the A.M.A., *Guides* is entitled, "Determining Impairment of the Upper Extremity Due to Sensory Deficits or Pain Resulting from Peripheral Nerve Disorders."

[5] Table 17-37, page 532 of the fifth edition of the A.M.A., *Guides* is entitled, "Impairments Due to Nerve Deficits."

active resistance. According to Table 16-11, page 484,[6] this weakness equaled a 25 percent impairment. Multiplying the 25 percent rating by the 37 percent maximum value for weakness in the femoral nerve resulted in a 9 percent lower extremity impairment due to femoral nerve weakness. Using the Combined Values Chart on page 604, Dr. Salomon and Dr. Singleton combined the 9 percent impairment for weakness in the femoral nerve with the 1 percent sensory impairment to equal a 10 percent impairment of the left lower extremity.

On April 11, 2007 the Office referred the medical evidence to an Office medical adviser for review. In an April 21, 2007 report, the Office medical adviser found that appellant had reached maximum medical improvement as of January 18, 2007, the date of Dr. Salomon's and Dr. Singleton's report. He opined that Dr. Salomon and Dr. Singleton improperly combined impairments for pain with loss of strength. The medical adviser explained that according to section 16.8a, page 508 and page 531 of the A.M.A., *Guides*, decreased strength could not be rated in the presence of pain as this prevented application of maximal force in the region being evaluated. As appellant's primary complaint was pain, the Grade 4 weakness should not be included in the impairment rating. The Office medical adviser opined that appellant had a one percent impairment of the left lower extremity based on Grade 3 sensory deficits and pain in the femoral nerve. He concurred with the calculation of the one percent impairment found by Dr. Salomon and Dr. Singleton.

By decision dated May 31, 2007, the Office granted appellant a schedule award for a one percent permanent impairment of the left lower extremity. The period of the award ran from January 18 to February 7, 2007.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act[7] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a mater which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[8] As of February 1, 2001, schedule awards are calculated according to the fifth edition of the A.M.A., *Guides*, published in 2000.[9]

[6] Table 16-11, page 484 of the fifth edition of the A.M.A., *Guides* is entitled, "Determining Impairment of the Upper Extremity Due to Motor and Loss of Power Deficits Resulting from Peripheral Nerve Disorders Based on Individual Muscle Rating."

[7] 5 U.S.C. §§ 8101-8193.

[8] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[9] *See* FECA Bulletin No. 01-05 (issued January 29, 2001) (schedule awards calculated as of February 21, 2001 should be evaluated according to the fifth edition of the A.M.A., *Guides*. Any recalculations of previous awards which result from hearings, reconsideration or appeals should, however, be based on the fifth edition of the A.M.A., *Guides* effective February 1, 2001).

The standards for evaluation the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.[10] Chapter 16 of the fifth edition of the A.M.A., *Guides* provides a detailed grading scheme and procedures for determining impairments of the upper extremities due to pain, discomfort, loss of sensation, or loss of strength.[11] Chapter 17 of the A.M.A., *Guides* sets forth the grading schemes and procedures for evaluating impairments of the lower extremities.[12]

The fifth edition of the A.M.A., *Guides* provides that loss of strength should be rated separately only if it is based on an unrelated cause or mechanism. Otherwise impairment ratings based on objective anatomic findings take precedence. Decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts (*e.g.*, thumb amputation) that prevent effective application of maximal force in the region being evaluated.[13] While impairment due to peripheral nerve injury may not be combined with impairment for loss of muscle strength, a claimant may be entitled to a schedule award for one or the other.[14]

ANALYSIS

The Office accepted that appellant sustained a left inguinal hernia. She claimed a schedule award for impairment to the left lower extremity.

Appellant submitted a January 18, 2007 schedule award report from Dr. Salomon, an attending general surgeon, and Dr. Singleton, an attending Board-certified neurologist. Referring to the fifth edition of the A.M.A., *Guides*, Dr. Salomon and Dr. Singleton calculated a one percent impairment of the left lower extremity due to sensory deficits in the femoral nerve. They multiplied the maximum 2 percent impairment for femoral nerve dysfunction according to Table 17-37 by 50 percent for Grade 3 pain according to Table 16-10, resulting in 1 percent. Dr. Salomon and Dr. Singleton also opined that appellant had an additional 9 percent impairment of the left lower extremity due to femoral nerve weakness according to Tables 17-137 and 16-10. They concluded that appellant had a 10 percent impairment of the left lower extremity.

In an April 21, 2007 report, an Office medical adviser reviewed the medical evidence and concurred with Dr. Salomon's and Dr. Singleton's calculation of a one percent impairment of the left lower extremity based on sensory deficit in the femoral nerve. The medical adviser opined, however, that Dr. Salomon and Dr. Singleton improperly combined impairments for pain with loss of strength. He noted that according to section 16.8a, page 508 and page 531 of the A.M.A., *Guides*, pain prevented an accurate evaluation of muscle strength. The medical adviser

[10] *See Paul A. Toms*, 28 ECAB 403 (1987).

[11] A.M.A., *Guides* (5th ed. 2001) 433-521, Chapter 16, "The Upper Extremities."

[12] *Id.* at 523-61, Chapter 17, "The Lower Extremities."

[13] *E.P.*, 58 ECAB ___ (Docket No. 07-1244, issued September 25, 2007); *James R. Taylor*, 56 ECAB 53 (2005).

[14] *Tara L. Hein*, 56 ECAB 431 (2005).

concluded that, as appellant's primary complaint was pain, weakness should not be included in the impairment rating.

The Board finds that the Office medical adviser applied the appropriate tables and grading schemes of the A.M.A., *Guides* to the findings of Dr. Salomon and Dr. Singleton and correctly calculated one percent impairment to the left leg. The medical adviser explained in detail that impairment for weakness could not be included in the schedule award rating as pain was appellant's primary complaint.[15] The medical evidence of record, therefore, does not establish that appellant sustained greater than a one percent impairment of the left leg.

CONCLUSION

The Board finds that appellant has not established that she sustained greater than a one percent impairment of the left lower extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 31, 2007 is affirmed.

Issued: February 15, 2008
Washington, DC

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

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

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

[15] *E.P.*, *supra* note 13.