United States Department of Labor
Employees' Compensation Appeals Board

E.B., Appellant	)	
	)	
and	)	**Docket No. 07-1784**
	)	**Issued: January 23, 2008**
DEPARTMENT OF THE ARMY, CHILDREN'S & YOUTH SERVICE, Heidelberg, Germany, 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 June 25, 2007 appellant filed a timely appeal from a March 27, 2007 decision by a hearing representative of the Office of Workers' Compensation Programs that denied an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant has more than four percent permanent impairment of the right lower extremity and four percent permanent impairment of the left lower extremity, for which she received a schedule award.

FACTUAL HISTORY

On March 19, 2001 appellant, then a 40-year-old office clerk, filed an occupational disease claim alleging that she developed bilateral tarsal tunnel syndrome, bilateral carpal tunnel syndrome, fibromyalgia and depression in the performance of duty. Her job required her to

perform numerous physical duties, including walking, answering telephones and handling personnel matters. Appellant first became aware of her condition on December 1, 1997 and first related it to her employment on March 26, 1998, the date she underwent surgical removal of a ganglion cyst from her right ankle. She stopped work on March 17, 1998 and did not return. In an October 27, 1998 report, Dr. Thomas M. Stanley, a Board-certified neurologist, diagnosed tarsal tunnel syndrome, which he concluded was causing bilateral numbness in appellant's feet. The Office accepted appellant's claim for bilateral tarsal tunnel syndrome.

On June 19, 2001 appellant claimed a schedule award and submitted various medical and physical therapy reports.

In a February 27, 2002 memorandum, the Office requested that a medical adviser provide an opinion concerning appellant's permanent partial impairment. On March 15, 2002 the medical adviser found that appellant had four percent right lower extremity impairment and four percent left lower extremity impairment pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He rated impairment due to pain involving the lateral plantar nerve which, at Table 17-37, is rated a maximum of five percent.[1] The medical adviser graded the sensory deficit under Table 16-10 on page 482[2] as Grade 2, decreased superficial cutaneous pain and allowed an 80 percent deficit. This resulted in four percent permanent impairment of both the right and left legs. The medical adviser indicated that appellant reached maximum medical improvement on March 15, 2002.

By decision dated August 5, 2002, the Office granted appellant a schedule award for four percent permanent impairment of both the right and left legs.

Appellant requested a review of the written record. In a June 18, 2002 report, Dr. Stanley noted appellant's complaints of bilateral foot pain and numbness. He noted concern that appellant might have continuing carpal tunnel and tarsal tunnel syndrome as well as neuropathy. In a December 11, 2002 report, Dr. Erick Bournigal, a Board-certified internist, explained that appellant had "significant hypermobility syndrome," which caused subluxation of her shoulders, causing paresthesias in her hands and increasing symptoms "even down into the legs." On March 28, 2003 Dr. Christoph C. Zencker, a podiatrist, diagnosed multiple chronic pain syndromes, including fibromyalgia, carpal tunnel syndrome and possible tarsal tunnel syndrome. He noted appellant's history of ankle pain since 1997 and ganglion cyst excision in 1998.

By decision dated July 2, 2003, the hearing representative affirmed the August 5, 2002 schedule award decision.

In an October 28, 2003 report, Dr. Stanley diagnosed bilateral tarsal tunnel syndrome, bilateral carpal tunnel syndrome and peripheral polyneuropathy with myofascial components and noted that appellant's numbness and paresthesias in the legs dated to 1998. On January 30, 2004 he provided an electromyogram (EMG) report noting normal medial and lateral plantar conduction on the left but absent medial and lateral plantar conduction on the right, with no

[1] A.M.A., *Guides* 552, Table 17-37.

[2] *Id.* at 482, Table 16-10.

generalized neuropathy or myopathy noted. In a report dated the same day, Dr. Stanley diagnosed bilateral dysthesias in the feet, possible right-sided tarsal tunnel syndrome, history of bilateral carpal tunnel syndrome, related myofascial complaints, and no evidence of generalized neuropathy. He opined that appellant's ganglion cyst removal might have caused scarring and thus contributed to appellant's dysthesias. Appellant continued to submit progress reports from Dr. Stanley and Dr. Bournigal, who noted her continuing course of treatment.

In a January 4, 2005 report, Dr. Stanley diagnosed tarsal tunnel syndrome and carpal tunnel syndrome with peripheral neuropathy as well as weight challenge and restless legs. On September 23, 2005 he noted appellant's continuing complaints of numbness and pain in her legs and feet. Dr. Stanley explained that her history of ankle pain began in 1997, when she was required to do a great deal of walking on the job. He diagnosed suspected bilateral carpal tunnel syndrome, history of right carpal tunnel syndrome, suspected right tarsal tunnel syndrome and history of nocturnal restless legs.

Appellant inquired about an increased schedule award. On June 8, 2006 the Office requested an updated medical opinion from Dr. Stanley. The Office noted that Dr. Stanley had diagnosed paresthesia and idiopathic peripheral neuropathy. It inquired whether these conditions were related to appellant's accepted tarsal tunnel syndrome. The Office also requested that Dr. Stanley clarify whether appellant's condition had materially worsened, and if so, whether that worsening was temporary or permanent. The Office inquired whether, in Dr. Stanley's opinion, appellant had any additional impairment warranting an increased schedule award.

On June 26, 2006 appellant filed a second schedule award claim.

By decision dated September 6, 2006, the Office denied appellant's request for an increased schedule award.

Appellant requested an oral hearing and a telephone hearing was held on January 12, 2007.

Appellant provided an August 1, 2006 report from Dr. Stanley who noted that appellant had a "history of tarsal tunnel on the right side and apparently was on permanent impairment for both of her legs." Dr. Stanley diagnosed suspected bilateral carpal tunnel syndrome, possibly developing underlying polyneuropathy, right tarsal tunnel syndrome and suspected bilateral involvement, possible underlying polyneuropathy, history of nocturnal restless legs, weight challenge and history of hypertension. He had recommended that an EMG be performed, but it was not obtained. Therefore it was "hard to answer questions in a letter" concerning appellant's current condition. In an August 4, 2006 EMG report, Dr. Stanley stated an impression of bilateral tarsal tunnel syndrome and noted that there was "absent medial and lateral plantar sensory conduction."

Following the hearing, appellant submitted medical reports, which duplicated reports previously submitted. She also provided a June 19, 1998 magnetic resonance imaging (MRI) scan report from Dr. Edward C. Calloway, who found that appellant had undergone a synovial cyst removal from her right ankle. Appellant also submitted an August 28, 2001 MRI scan report from Dr. Ricanthony R. Ashley, a Board-certified diagnostic radiologist, who diagnosed

"focal area of edema within the calcaneus suggestive of bone bruising otherwise unremarkable MRI [scan] of the right ankle."

By decision dated March 27, 2007, the hearing representative affirmed the Office's September 6, 2006 decision denying appellant's request for an increased schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulations[4] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of schedule 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.[5]

ANALYSIS

The Board finds that appellant has not established that she had greater than four percent permanent impairment of the right and left lower extremities, for which she received a schedule award. The Office accepted appellant's claim for bilateral tarsal tunnel syndrome and paid appropriate compensation, including the above noted schedule award. Appellant has not submitted sufficient medical evidence to establish impairment greater than previously awarded.

Appellant's treating physician, Dr. Stanley, did not provide a specific impairment rating concerning her lower extremities. In an August 1, 2006 report, Dr. Stanley specifically declined to offer an opinion on permanent impairment. The reports from Dr. Bournigal did not specifically address whether appellant had additional permanent impairment of her legs due to her accepted bilateral tarsal tunnel syndrome. The August 5, 2002 schedule award was based on the review of the Office medical adviser who on March 15, 2002 utilized Table 16-10[6] and Table 17-37[7] to rate impairment for sensory loss of the lateral plantar nerve. As noted, this resulted in an impairment of four percent to both lower extremities. Although appellant provided numerous reports diagnosing tarsal tunnel syndrome and other conditions, she did not provide any medical report providing an impairment rating in accordance with the A.M.A., *Guides*. In determining whether an employment-related condition has caused a permanent impairment to a schedule member of the body, the Office uses the A.M.A., *Guides* as the uniform standard for evaluating

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *See id.*

[6] A.M.A., *Guides* 482, Table 16-10.

[7] *Id.* at 552, Table 17-37.

schedule losses. None of the medical evidence submitted by appellant provides a basis for finding greater impairment pursuant to the A.M.A., *Guides*.

At the oral hearing on January 12, 2007, appellant contended that she had additional impairment due to neuropathy. However, this was not addressed in a rationalized medical opinion by any of her attending physicians. The reports from Dr. Stanley and Dr. Bournigal also diagnosed conditions not accepted by the Office.[8] These reports do not support appellant's claim for an increased schedule award. As noted, neither of these physicians provided an opinion consistent with the A.M.A., *Guides*, supporting a greater degree of permanent impairment attributable to appellant's accepted bilateral tarsal tunnel syndrome. The Board finds that appellant has not established that she is entitled to an increased schedule award.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she had more than four percent permanent impairment of both the right and left lower extremities, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2007 and September 6, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 23, 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

[8] To the extent that appellant alleges impairment due to a condition not accepted as employment related, the Board notes that schedule awards are only payable where the claimant sustains a permanent impairment of a listed member of the body due to an employment injury. *See Denise L. Crouch*, 57 ECAB ___ (Docket No. 04-1905, issued October 21, 2005). *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).