

**United States Department of Labor  
Employees' Compensation Appeals Board**

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M.G., Appellant

and

**SOCIAL SECURITY ADMINISTRATION,  
Philadelphia, PA, Employer**

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**Docket No. 08-834  
Issued: November 6, 2008**

*Appearances:*

*Jeffrey P. Zeelander, Esq., for the appellant  
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 January 28, 2008 appellant filed a timely appeal of a November 19, 2007 merit decision of the Office of Workers' Compensation Programs denying her claim for a recurrence of total disability and a February 9, 2007 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the recurrence claim and schedule award.

**ISSUES**

The issues are: (1) whether appellant has more than 43 percent impairment to her left lower extremity for which she received a schedule award; and (2) whether appellant has established that she sustained a recurrence of total disability commencing July 28, 2007 causally related to her accepted employment-related injuries.

**FACTUAL HISTORY**

This case has previously been before the Board. In an October 13, 2006 decision, the Board set aside the Office's December 20, 2005 decision that granted appellant a schedule award

for 43 percent impairment to her left leg.<sup>1</sup> The award was based on the November 14, 2005 report of the Office medical adviser. The Board noted that Dr. George Rodriguez, a Board-certified physiatrist, had opined that appellant had a 77 percent permanent impairment to the left leg while the Office medical adviser's review of Dr. Rodriguez findings resulted in a 43 percent left leg impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup> The Board found that the Office medical adviser agreed with Dr. Rodriguez that appellant's ankle extension was limited to the neutral position, resulting in a seven percent left lower extremity impairment.<sup>3</sup> The Board found that the Office medical adviser properly excluded Dr. Rodriguez's 20 percent impairment due to ankle arthritis as he did not provide evidence of ankle arthritis and Table 17-2 of the A.M.A., *Guides* specifically excluded the combination of range of motion impairment, for which appellant was accorded a seven percent impairment due to loss of ankle extension, with impairment for arthritis.<sup>4</sup> The Board also determined that Dr. Rodriguez's opinion that appellant had a one percent impairment with respect to a sensory deficit resulting from the plantar nerve was not supported by his examination findings. However, with respect to an impairment rating based on a vascular impairment, the Board found that the Office medical adviser did not adequately explain why he assigned a Class 2 impairment representing a 39 percent peripheral vascular impairment as opposed to Dr. Rodriguez's classification of a Class 3 impairment representing a 69 percent peripheral vascular impairment. The Board remanded the case to the Office to further develop the medical evidence as to the extent of appellant's left lower extremity impairment under the A.M.A., *Guides* and to issue an appropriate merit decision on appellant's schedule award claim. The facts and the circumstances of the case as set forth in the Board's prior decision and order are incorporated herein by reference. The facts relevant to the present appeal are set forth.

The Office requested that the Office medical adviser explain why a Class 2 lower extremity impairment due to peripheral vascular disease was assigned. In a November 26, 2006 report, the Office medical adviser noted the descriptions of Class 2 and Class 3 lower extremity impairments due to peripheral vascular disease under Table 17-38.<sup>5</sup> He found that Dr. Rodriguez's report, which advised that appellant walked from the parking lot to her place of employment, was consistent with a Class 2 category. The Office medical adviser further found there was no evidence to support a Class 3 category or any evidence of amputation of any left lower extremity digits.

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<sup>1</sup> Docket No. 06-520 (issued October 13, 2006). The Office accepted the claim for contusion to the elbow and forearm, tenosynovitis of the left foot and ankle, contusion of the left knee, left sprain and strain of the ankle, and aggravation of preexisting deep venous thrombosis (DVT) resulting in permanent restrictions and authorized all appropriate objective testing, including a July 21, 2003 arthroscopic surgery to evaluate the cause of appellant's ankle swelling and pain. Appellant returned to her preinjury position on February 14, 2005.

<sup>2</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>3</sup> *Id.* at 537, Table 17-11.

<sup>4</sup> *Id.* at 526, Table 17-2.

<sup>5</sup> *Id.* at 554, Table 17-38.

By decision dated February 9, 2007, the Office again found that appellant had a 43 percent permanent impairment to the left lower extremity based on the explanation provided by the Office medical adviser.

On September 11, 2007 appellant filed a claim for a recurrence of total disability beginning on July 28, 2007 due to her accepted employment injuries. She stopped work on July 30, 2007. The employing establishment noted that it provided appellant limited-duty work due to her accepted work injury. It provided a printer at her workstation to limit her walking and assigned her work which could be performed while sitting and that entailed limited walking. In support of her recurrence claim, appellant submitted emergency room records from Franklin Hospital dated July 29 to August 27, 2007. Venous duplex doppler ultrasound results for the upper right extremity dated August 7, 2007 and lower left extremity dated August 27, 2007 were submitted. A July 29, 2007 emergency record stated that appellant was admitted for cellulitis and abscess of the left leg, except foot. Appellant was previously evaluated on July 26, 2007 for left leg pain and swelling and was diagnosed with cellulitis. The August 7 and 8, 2007 emergency room records diagnosed deep vein thrombus arm and "hypercoagulable." The August 7, 2007 venous duplex doppler study identified a thrombus in the right basilica vein from the mid humerus to the level of the wrist with suggested progression. The August 26 and 27 emergency room records diagnosed a leg strain. The venous duplex doppler study of the left leg found no visible thrombus; however, areas of venous wall thickening within the trifurcation with attenuation and irregularity of the vein were noted.

In an October 5, 2007 letter, the Office informed appellant of the medical evidence needed to support her claim for a recurrence of disability.

In a November 6, 2007 report, Dr. Edwin L. Merow, an osteopath, advised that appellant had a recurrence on July 28, 2007, which consisted of cellulitis and an abscess of her left leg. He noted that appellant was a customer service representative and opined that her duties at work, which require standing and walking with little elevation of her left leg, attributed to a recurrence of her work-related injury. Dr. Merow explained that, since the August 15, 2001 work accident, appellant has experienced significant left leg and ankle pain. He advised that the severity was chronic and that she had constant flare-ups of blood clots. Dr. Merow stated that appellant had significant ambulatory dysfunction and that the pitting edema since her August 2001 work accident and had never improved. He stated that appellant was hospitalized on August 27, 2007 with left leg strain because of the severity of the chronic abnormal swelling. Dr. Merow also noted that she has been on chronic anticoagulation and developed post phlebitis syndrome of the left leg. He stated appellant required bed rest and minimal activity and opined her condition would not improve.

By decision dated November 19, 2007, the Office denied appellant's recurrence of total disability claim. It found that the medical evidence did not establish that she sustained a recurrence of disability commencing on July 28, 2007 causally related to her accepted employment-related injuries.

## **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of the Federal Employees' Compensation Act<sup>6</sup> and its implementing regulation<sup>7</sup> 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.<sup>8</sup>

## **ANALYSIS -- ISSUE 1**

The Office found a 43 percent left lower extremity impairment based on the November 14, 2005 report of its Office medical adviser.<sup>9</sup> The Board, in its October 13, 2006 decision, remanded the case as the Office medical adviser did not adequately explain how he arrived at a Class 2 classification for an impairment rating based on a vascular impairment when Dr. Rodriguez had assigned a Class 3 classification.

On remand, the Office medical adviser explained that a Class 2 classification, which represented a 39 percent peripheral vascular impairment, was consistent with Dr. Rodriguez's description that appellant walked from the parking lot to her place of employment. Under Table 17-38 page 554 of the A.M.A., *Guides*, a Class 2 description, which yields a 10 to 39 percent impairment due to peripheral vascular disease, states, intermittent claudication on walking at least 100 yards at an average pace or persistent edema of moderate degree incompletely controlled by elastic supports or vascular damage as evidenced by a sign such as a healed painless stump of an amputated digit showing evidence of persistent vascular disease or healed ulcer. A Class 3 description, which yields a 40 to 69 percent impairment due to peripheral vascular disease, states: intermittent claudication or walking as few as 25 yards and no more than 100 yards at an average pace or marked edema that is only partially controlled by elastic supports or vascular damage as evidenced by a sign such as a healed amputation of two or more digits of one extremity with evidence of persistent vascular disease or superficial ulceration.

The Board finds the description by Dr. Rodriguez more accurately fits a Class 2 description. The Office medical adviser noted that there was no other evidence to support a Class 3 category or any evidence of amputation of any left lower extremity digits. Accordingly,

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<sup>6</sup> 5 U.S.C. § 8107(a)-(c).

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> See *Mark A. Holloway*, 55 ECAB 321 (2004).

<sup>9</sup> 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. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (August 2002).

the Board finds that appellant has a 39 percent or a Class 2 lower extremity impairment due to peripheral vascular disease.

Under the Combined Values Chart, the Board finds that the impairment findings contained in the Board's October 13, 2006 decision and the above analysis results in a 43 percent permanent impairment to the left lower extremity.<sup>10</sup> Accordingly, the Board finds that appellant is entitled to a schedule award for her left lower extremity of 43 percent, for which she received a schedule award. Thus, the Board will affirm the Office's February 9, 2007 decision which reflects that appellant is entitled to a 43 percent lower extremity impairment.

### **LEGAL PRECEDENT -- ISSUE 2**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>11</sup> This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>12</sup>

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.<sup>13</sup>

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.<sup>14</sup>

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<sup>10</sup> Impairment due to limitation of ankle extension, 7 percent, combined with 39 percent impairment for peripheral vascular disease yields 43 percent impairment. *See A.M.A., Guides 605.*

<sup>11</sup> 20 C.F.R. § 10.5(x).

<sup>12</sup> *Id.*

<sup>13</sup> *Barry C. Peterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>14</sup> *James H. Botts*, 50 ECAB 265 (1999).

## **ANALYSIS -- ISSUE 2**

The Office accepted that appellant sustained contusions to the left elbow and left forearm, tenosynovitis of the left foot and ankle, contusion of the left knee, left sprain and strain of the ankle, and aggravation of preexisting DVT in the left lower extremity resulting in permanent restrictions causally related to factors of her federal employment. Appellant returned to work in her preinjury position on February 14, 2005 and the employing establishment modified her duties to limit her walking and allow her to sit. She claimed a recurrence of total disability commencing on July 28, 2007 causally related to her accepted employment injuries.

In support of her claim, appellant submitted records and objective testing from Franklin Hospital dated July 29, August 7, 8, 26 and 27, 2008. While various diagnoses were provided, none of the hospital records or objective testing provided any medical rationale addressing how or why appellant's diagnosed conditions were caused or aggravated by the accepted employment injuries.<sup>15</sup> Furthermore, the conditions of cellulitis and DVT of the arm and hypercoagulable have not been accepted by the Office. The Board finds that such medical records and objective testing are of diminished probative value as there is no explanation on the issue of causal relation or disability for work.

In his November 6, 2007 report, Dr. Merow opined that appellant had a recurrence on July 28, 2007 which consisted of cellulitis and an abscess of her left leg. While he opined that appellant's customer service representative duties of standing and walking with little elevation of the left leg attributed to a recurrence of her work-related injury, he did not present adequate medical rationale showing how her cellulitis and abscess of the left leg, conditions not accepted by the Office, were causally related to the August 15, 2001 work injury and her accepted conditions. Dr. Merow explained that, since the August 15, 2001 work accident, appellant had experienced significant chronic left leg and ankle pain as well as flare-ups of the blood clots. He also indicated that appellant has had significant ambulatory dysfunction and the pitting edema since her August 2001 work accident, which has never improved. However, the August 27, 2007 venous duplex doppler of the left lower extremity reported no visible thrombosis. While Dr. Merow states appellant was hospitalized on August 27, 2007 with left leg strain because of the severity of the chronic abnormal swelling and has developed post phlebitis syndrome of the left leg due to being on anticoagulation medicine, he does not explain how such chronic abnormal swelling or post phlebitis syndrome were caused or contributed to by her accepted conditions. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship between appellant's conditions beginning July 28, 2007 to the accepted August 15, 2001 work injury.

The Board finds that appellant has not submitted sufficiently rationalized medical evidence establishing that she was totally disabled beginning July 28, 2007 due to her employment-related conditions. Furthermore, there is no evidence showing that appellant experienced a change in the nature and extent of the limited-duty requirements or was required to perform duties which exceeded her medical restrictions.

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<sup>15</sup> *K.W.*, 59 ECAB \_\_\_\_ (Docket No. 07-1669, issued December 13, 2007); *J.M.*, 58 ECAB \_\_\_\_ (Docket No. 06-2094, issued January 30, 2007) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit her from performing the limited-duty position she assumed after she returned to work.

**CONCLUSION**

The Board finds that appellant has no greater than a 43 percent left lower extremity impairment for which she received a schedule award. The Board further finds that appellant has failed to establish that she sustained a recurrence of total disability beginning on July 28, 2007 causally related to her accepted employment-related injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated November 19 and February 9, 2007 are affirmed.

Issued: November 6, 2008  
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