United States Department of Labor
Employees' Compensation Appeals Board

K.L., Appellant	)	
and	)	**Docket No. 08-1192**
	)	**Issued: February 9, 2009**
DEPARTMENT OF THE ARMY, ARMY DEPOT, Corpus Christi, TX, Employer	)	

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 17, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 29, 2008 regarding a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has more than a six percent left leg impairment; and (2) whether the Office used the correct pay rate for compensation purposes.

FACTUAL HISTORY

Appellant filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury in the performance of duty on May 1, 2000. She stated that she worked as an aircraft electrician and was injured while climbing a work stand. The record indicates appellant returned to work in a light-duty position on May 8, 2008. The claim was accepted for lumbar and left

knee sprains and thoracic/lumbosacral neuritis. The Office authorized a lumbar fusion surgery on January 9, 2006.

On September 12, 2007 appellant submitted a claim for compensation (Form CA-7) indicating she was claiming a schedule award. The claim form reported that she had retired from federal employment and was receiving retirement benefits as of November 22, 2002. Appellant submitted a March 20, 2007 report from Dr. Frank Luckay, an orthopedic surgeon, who provided a history and results on examination. As to a permanent impairment, Dr. Luckay identified Tables 15-18 and 15-16 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.* He opined that appellant had a four percent left leg impairment for L5 weakness, and two percent for S1 weakness, based on grading the impairment at 10 percent of the maximum for each nerve root.

By report dated January 24, 2008, an Office medical adviser reviewed Dr. Luckay's report. The medical adviser concurred that, under the A.M.A., *Guides* at Tables 15-18 and 15-16, appellant had a six percent left leg permanent impairment due to decreased strength.

In a decision dated February 29, 2008, the Office issued a schedule award for a six percent permanent impairment to the left leg. The period of the award was 17.28 weeks commencing March 20, 2007. The pay rate for compensation purposes was $789.05 per week, based on appellant's pay rate on May 1, 2000.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[1] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[2]

ANALYSIS -- ISSUE 1

The February 29, 2008 schedule award was based on the March 20, 2007 report of attending physician, Dr. Luckay, and the January 24, 2008 report from the Office medical adviser. Dr. Luckay applied Table 15-18, which provides a maximum leg impairment for loss of strength in the L5 nerve root of 37 percent.[3] For the S1 nerve root the maximum impairment is 20 percent.[4] In accord with the A.M.A., *Guides* the impairment is graded based on severity

[1] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

[2] *A. George Lampo*, 45 ECAB 441 (1994).

[3] A.M.A., *Guides* 424, Table 15-18 (5th ed. 2001).

[4] *Id.*

under Table 15-16.[5] Dr. Luckay graded the impairment at 10 percent of the maximum, or 4 percent for the L5 nerve root and 2 percent for the S1 nerve root. The Office medical adviser concurred with Dr. Luckay that appellant had a six percent permanent impairment to the left leg.

There is no other probative medical evidence of record regarding a permanent impairment to a scheduled member of the body. On appeal appellant refers to a deep vein thrombosis (DVT), but no physician of record offers an opinion that a DVT was employment related or describes a permanent impairment based on the condition. Dr. Luckay reported appellant "was worked up for [DVT] but the Doppler studies were within normal limits." The Board finds that the probative evidence does not establish more than a six percent permanent impairment to the left leg.

The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the leg, the maximum number of weeks of compensation is 288 weeks. Since appellant's impairment was six percent, she is entitled to six percent of 288 weeks, or 17.28 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.[6] In this case the Office medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Luckay. The award therefore properly runs for 17.28 weeks commencing on March 20, 2007.

LEGAL PRECEDENT -- ISSUE 2

Under 5 U.S.C. § 8101(2), "'monthly pay' means the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater...."

ANALYSIS -- ISSUE 2

On appeal, appellant briefly argues that she is entitled to a "recurrent" pay rate because there was a delay in authorizing the back surgery. The record indicated that she underwent back surgery on January 9, 2006. According to the CA-7 form, appellant had retired in November 2002. As noted above, she must return to "regular full-time employment" and the recurrence must begin more than six months after the return to work. Appellant did not offer evidence or argument that she returned to regular employment. The record indicated that she returned to a light-duty job and the Board notes that an April 24, 2003 medical report referred to her light-duty status at work. Moreover, appellant did not allege and establish a recurrence of disability for a specific period.[7] Based on the current evidence of record, there is no indication

[5] *Id.* at Table 15-16. For a Grade 4 impairment, described as muscle function that involves "active movement against gravity with some resistance," the range is 1 to 25 percent of the maximum impairment for the identified nerve root.

[6] *Albert Valverde*, 36 ECAB 233, 237 (1984).

[7] *See John M. Richmond,* 53 ECAB 702 (2002).

that a recurrent pay rate is appropriate. The Office calculated appellant's pay rate as of May 1, 2000, the date of injury and the date disability began. The Board finds no probative evidence of error regarding the pay rate for compensation purposes.

CONCLUSION

The Board finds the medical evidence does not establish more than a six percent permanent impairment to the left leg. There is no evidence of error regarding the pay rate for compensation purposes of $789.05 per week.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 29, 2008 is affirmed.

Issued: February 9, 2009
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