United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 09-1184**
	)	**Issued: April 6, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Reno, NV, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 1, 2009 appellant filed an appeal from a schedule award decision of the Office of Workers' Compensation Programs dated March 12, 2009. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has more than 18 percent permanent impairment of the penis for which he received a schedule award.

FACTUAL HISTORY

On April 19, 2004 appellant, then a 34-year-old letter carrier, filed a claim alleging that on April 17, 2004 he pulled a hamper of magazines and injured his low back. The Office accepted appellant's claim for lumbar strain, lumbar disc protrusion and later expanded the claim to include retrograde ejaculation. It authorized an L5-S1 microdiscectomy which was performed on March 14, 2005, an anterior total disc replacement of L5-S1 which was performed on October 11, 2005 and an excisional biopsy of a skin lesion which was performed on

June 20, 2007. Appellant did not stop work but returned to a light-duty position. Appropriate compensation benefits were paid.

Appellant was initially treated by Dr. Forrest Burke, a Board-certified orthopedist, from April 17 to December 6, 2004, for back pain radiating into his left leg which developed after he lifted a mail hamper at work. Dr. Burke diagnosed discogenic low back pain and recommended epidural steroid injections. Magnetic resonance imaging (MRI) scans of the lumbar spine dated May 26, 2004 and February 16, 2005 revealed left paracentral disc protrusion at L5-S1.

Appellant came under the treatment of Dr. James R. Rappaport, a Board-certified orthopedist, from December 10, 2004 to October 11, 2005, for treatment of back pain and left leg weakness that occurred after a work-related lifting incident. Dr. Rappaport diagnosed L5-S1 disc herniation with left S1 radiculitis versus radiculopathy and L5-S1 spondylosis with mild discogenic low back pain. On March 14, 2005 he performed a microscopic laminotomy, foraminotomy and discectomy at left L5-S1 and diagnosed herniated lumbar disc, lumbar radiculitis and low back pain. Dr. Rappaport noted that appellant continued to have discogenic low back pain at L5-S1 and left lumbar radiculitis and recommended a total disc replacement. On October 11, 2005 he performed a total disc replacement at L5-S1 and diagnosed internal disc derangement at L5-S1 and chronic low back pain. In reports dated December 21, 2005 and March 22, 2006, Dr. Rappaport noted appellant's complaints of symptoms consistent with retrograde ejaculation which was a possible side effect of the surgery. He returned appellant to work on December 26, 2006 and noted that he reached maximum medical improvement on March 22, 2006. On June 20, 2006 Dr. Rappaport performed an excisional biopsy of the skin lesion at the site of the surgery.

On January 18, 2007 appellant filed a claim for a schedule award and the Office began developing whether appellant had permanent impairment of the penis.[1]

Appellant submitted an April 2, 2007 report from Dr. Rappaport who diagnosed retrograde ejaculation and noted that this condition was a known complication of a total disc replacement. Dr. Rappaport opined that the diagnosed retrograde ejaculation was causally related to appellant's work injury and noted that there was no treatment.

On November 21, 2007 the Office referred appellant for a second opinion to Dr. Angelo Trabucco, a Board-certified urologist, for a determination of whether appellant had residuals of his accepted conditions and whether he had permanent impairment attributable to his accepted conditions.

In an December 4, 2007 report, Dr. Trabucco noted a history of appellant's work-related condition and treatment. He noted examination findings of a normal urethra, the testes were bilaterally descended with no masses, there was bogginess and tenderness of the prostate consistent with prostatitis and a urinalysis revealed trace red blood cells. Dr. Trabucco diagnosed prostatitis and opined that this condition might be contributing to appellant's

[1] On January 18, 2007 appellant also filed a schedule award claim for impairment to the lower extremities. On March 12, 2009 the Office granted him a schedule award for three percent permanent impairment of the left leg. Appellant appealed this decision to the Board. It is proceeding separately to adjudication under appeal No. 10-1021.

retrograde ejaculation. In a follow-up examination dated January 22, 2008, he opined that appellant's retrograde ejaculation was most likely related to his chronic infection of the prostate which could be confirmed with a course of antibiotic therapy and postejaculatory urine analysis. He indicated appellant's subjective symptoms of retrograde ejaculation could be due to the L5-S1 spinal surgery but that his condition was complicated by the presence of a chronic prostate infection. Dr. Trabucco recommended a postejaculatory urine analysis to confirm the cause of the retrograde ejaculation.

Appellant began seeing Dr. Trabucco, as his treating physician. In June 9 and September 3, 2008 Dr. Trabucco noted postejaculatory sperm in the urine confirming retrograde ejaculation. He further advised that appellant's subjective symptoms were improved with Sudafed. Dr. Trabucco opined that the diagnosed retrograde ejaculation was the result of the spinal surgery. On September 3, 2008 he advised that the prostatitis had resolved and the retrograde ejaculation was reversible with Sudafed.

In a letter to Dr. Trabucco dated November 28, 2008, the Office requested Dr. Trabucco provide an impairment rating for appellant's accepted retrograde ejaculation under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[2] (A.M.A., *Guides*). In a January 22, 2009 report, Dr. Trabucco noted that appellant had a neurological injury from his spinal surgery that occurred on October 11, 2005 after sustaining a work-related injury on March 17, 2004. He advised that the neurological injury resulted in objective evidence of retrograde ejaculation as demonstrated by post void ejaculation urine cytology. Dr. Trabucco noted that appellant was not sterile and could father children with the aid of pharmacotherapy. He diagnosed retrograde ejaculation and opined that maximum medical improvement was reached on September 3, 2008. Dr. Trabucco noted that there was no evidence appellant had pain or functional loss of the penis either erectile dysfunction or symmetry dysfunction and discharged appellant from his care.

The Office medical adviser reviewed Dr. Trabucco's January 22, 2009 report and noted that appellant did not have pain of the penis, erectile dysfunction or urethral impairment but had evidence of retrograde ejaculation. The medical adviser opined that pursuant to Table 7-5 on page 156 of the A.M.A., *Guides*[3] appellant would be considered Class 1, which corresponded to a five percent whole person impairment of the penis.[4] Using the ratio provided by the Office's procedures, he calculated that appellant sustained an 18 percent permanent impairment of the penis.[5] He further noted the date of maximum medical improvement was September 3, 2008.

[2] A.M.A., *Guides* (5th ed. 2001).

[3] *Id.* at 156, Table 7-5.

[4] The medical adviser likewise indicated that appellant's condition represented a Class 1 impairment, one to nine percent whole person impairment, under Table 13-21, Criteria for Rating Neurologic Sexual Impairment. *Id*. at 342.

[5] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4.(c)(2)(a) (August 2002).

On March 12, 2009 the Office granted appellant a schedule award for 18 percent impairment for the penis. The period of the award was from May 19, 2007 to September 3, 2008.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[6] and its implementing regulations[7] 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 regulations as the appropriate standard for evaluating schedule losses.[8]

Office procedures provide a formula to measure the percentage of impairment of an organ when the whole person impairment is provided. The whole person impairment of the claimant, identified as A, is divided by B, the maximum impairment of the organ, which equals X, the impairment rating, divided by 100. For organs such as the penis, which have more than one physiologic function, the A.M.A., *Guides* provide whole person impairment levels for each function. When calculating the impairment of these organs, the Office medical adviser must consider all functions as instructed in the A.M.A., *Guide*s. In these cases, the maximum whole person impairment ascribed to the particular organ (B) is obtained by combining the maximum levels for all functions using the Combined Values Chart in the current edition of the A.M.A., *Guides*. The actual whole person impairment (A) is obtained by combining all functional impairments found using the Combined Values Chart in the A.M.A., *Guides*.[9]

ANALYSIS

The Office accepted that appellant sustained a lumbar strain, lumbar disc protrusion and later expanded the claim to include retrograde ejaculation due to his April 17, 2004 employment injury. Appellant underwent an L5-S1 microdiscectomy on March 14, 2005 and an anterior total disc replacement of L5-S1 on October 11, 2005. He filed a claim for a schedule award. The Office determined that appellant was entitled to a schedule award for 18 percent permanent impairment of the penis.

The Board finds that appellant has no more than 18 percent permanent impairment of the penis. Appellant submitted an April 2, 2007 report from Dr. Rappaport who diagnosed

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404 (1999).

[8] *See id*.; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[9] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4.(c)(2)(a) (August 2002).

retrograde ejaculation and opined that this condition was a known complication of a total disc replacement and was causally related to his industrial injury and subsequent treatment including surgery. He was also seen by Dr. Trabucco regarding the cause of any sexual dysfunction and the extent of any impairment. In reports dated December 4, 2007 to January 22, 2009, Dr. Trabucco noted that appellant sustained a neurologic injury from his spinal surgery on October 11, 2005. He advised that the neurologic injury resulted in objective evidence of retrograde ejaculation as demonstrated by post void ejaculation urine cytology. Dr. Trabucco noted maximum medical improvement was reached on September 3, 2008 and noted that the diagnosed retrograde ejaculation was permanent but reversible with medication. He noted that there was no pain and no evidence appellant had functional loss of the penis either erectile dysfunction or symmetry dysfunction.

In a February 16, 2009 report, the Office medical adviser reviewed Dr. Trabucco's January 22, 2009 report and noted appellant did not suffer pain of the penis, erective dysfunction or urethral impairment but had evidence of retrograde ejaculation. He opined that appellant would be considered Class 1 under Table 7-5, identified as sexual function possible but with varying degrees of difficulty of erection, ejaculation or sensation.[10] The Office medical adviser noted that based on findings in the record appellant was at the mean impairment level within Class 1 or 5 percent whole person impairment. He noted that there was no objective urethral impairment pursuant to Table 7-5 on page 156 of the A.M.A., *Guides*.[11] The Office medical adviser converted this whole person impairment into impairment of the penis[12] pursuant to Office procedures.[13] Utilizing the ratio provided in the procedure manual, he found that the 5 percent whole person impairment divided by the 28 percent maximum whole person impairment for the penis[14] equaled .1785 divided by 100, or a 17.8 percent permanent impairment of the penis, which he properly rounded up to 18 percent penile impairment.[15] The Office medical adviser further found that the date of maximum medical improvement would be September 3, 2008. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than 18 percent impairment of the penis.

The Board finds that, under the A.M.A., *Guides*, appellant has no more than 18 percent permanent impairment of the penis.

[10] A.M.A. *Guides* 156, Table 7-5.

[11] *Id.*

[12] *See N.D.*, 59 ECAB ___ (Docket No. 07-1981, issued February 1, 2008) (the Act does not authorize schedule awards for permanent impairment of the whole person).

[13] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4.(c)(2)(a) (August 2002).

[14] Fifteen percent for sexual function combined with 15 percent for urethral functions. *See id*. The Combined Values Chart is at page 604 of the A.M.A., *Guides*.

[15] *Id.; see also B.C.*, 58 ECAB 111 (2006) (Office procedures note that for organs such as the penis, which have more than one physiologic function, the A.M.A., *Guides* provide whole person impairment levels for each function; when calculating the impairment of these organs, the Office medical adviser must consider all functions as instructed in the A.M.A., *Guides*.)

On appeal, appellant asserts that he was entitled to a greater impairment than the 18 percent permanent impairment of penis granted by the Office. He indicated that he has had a decreased sex drive since his back surgery, decreased sensitivity during sexual intercourse, inability to ejaculate normally since his back surgery and occasional erectile dysfunction. The Board notes that the Office evaluated Dr. Trabucco's findings and applied them to the A.M.A., *Guides*. As discussed above, the standards used by the Office to determine permanent impairment for schedule award purposes provides for an 18 percent permanent impairment for the accepted retrograde ejaculation. There was no additional evidence which supports that appellant was entitled to a greater award than that which was granted by the Office.

CONCLUSION

The Board finds that appellant has no more than 18 percent permanent impairment of his penis for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 12, 2009 is affirmed.

Issued: April 6, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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