United States Department of Labor
Employees' Compensation Appeals Board

P.Y., Appellant	)	
	)	**Docket No. 09-2136**
and	)	**Issued: April 16, 2010**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Trenton, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 20, 2009 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 14, 2009. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained any permanent impairment of her right lower extremity due to her accepted cellulitis condition.

FACTUAL HISTORY

On February 11, 2006 appellant, then a 42-year-old mail processor, filed an occupational disease claim alleging that she developed cellulitis due to mite bites in the performance of duty. Dr. Thomas J. Mercora, an osteopath, examined appellant on February 13, 2006 and noted a history of bug bites in the performance of duty. He found edema and erythema in the right leg on the anterior tibia. Dr. Mercora diagnosed right leg cellulites and recommended antibiotics. The Office accepted her claim for cellulitis of the right leg on March 2, 2006.

Dr. Steven L. Katz, an osteopath, examined appellant on March 27, 2006 due to intermittent swelling and erythema of the right leg. He found pitting edema worse on the right with erythema and opined that appellant possibly had chronic venous insufficiency with stasis dermatitis rather than bacterial cellulitis. Dr. Katz recommended a formal vascular evaluation.[1]

Dr. David N. Brotman, a Board-certified surgeon, examined appellant on May 9, 2006. He noted that appellant's left leg was swollen following bilateral leg cellulitis. Dr. Brotman found general obesity and prominence of the lower extremity fatty tissues to her heels and mild to moderate pitting edema. He diagnosed lymphedema and stated that this condition could predispose her to episodes of infectious and noninfectious cellulitis or dermatitis. Dr. Brotman suggested that appellant's lymphedema was a chronic condition.

Appellant requested a schedule award on June 20, 2008. In a report dated October 16, 2007, Dr. David Weiss, an osteopath, reviewed appellant's history of injury and medical history. He examined appellant and found pretibial edema in both lower extremities and four plus pitting edema bilaterally as well as lymphedema to the level of her knees bilaterally, with excellent peripheral pulses. Dr. Weiss found induration involving the mid-tibial region on both legs. He diagnosed contact dermatitis secondary to dust mites with subsequent bacterial infections to both legs and lymphedema with stasis dermatitis to both lower extremities. Dr. Weiss provided a permanent impairment rating under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[2] Based on Table 17-38, Dr. Weiss diagnosed Class 2 peripheral vascular disease of the right and left lower extremities, 39 percent impairment. He stated that appellant had reached maximum medical improvement on October 16, 2007.

In a report dated July 3, 2008, appellant's attending physician, Dr. D. Daniel Files, a Board-certified osteopath, advised that appellant had been discharged from treatment. He stated that appellant had a history of cellulitis secondary to bug bites resulting in lymphedema. Dr. Files diagnosed lymphedema secondary to cellulitis and stated that appellant's prognosis was stable.

On August 11, 2008 the Office medical adviser reviewed the medical evidence and noted that the Office had not accepted any left lower extremity condition as employment related. The district medical adviser stated that appellant did not have evidence of peripheral vascular disease, only obesity, which he found likely caused appellant's bilateral leg swelling. He stated, "A superficial cellulitis would not be expected to cause peripheral vascular disease." The district medical adviser disagreed with the finding of permanent impairment related to the accepted condition. He indicated that the findings on examination did not warrant the classification of impairment provided by Dr. Weiss.

By decision dated September 30, 2008, the Office denied appellant's request for a schedule award, finding that the district medical adviser concluded that she did not sustain permanent impairment to the lower extremities.

[1] Diagnostic testing obtained on June 21, 2006 did not show evidence for deep venous thrombosis with evidence of reflux in the saphenous femoral junction.

[2] A.M.A., *Guides* 5th ed. (2000).

Appellant, through her attorney, requested an oral hearing on October 17, 2008 which was held on February 24, 2009. Counsel contended that appellant's claim should be accepted to include injury to both legs. He also argued that the Office medical adviser's report was not sufficient to constitute the weight of the medical evidence and created a conflict with Dr. Weiss.

By decision dated May 14, 2009, the hearing representative affirmed the September 30, 2008 decision, finding that Dr. Weiss' report was not sufficiently rationalized to support appellant's claim of permanent impairment.

On appeal, appellant contends that she has permanent impairment of her lower extremities and that a conflict of medical opinion exists.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of her claim, including that she sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.[4]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5]

The schedule award provision of the 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 due to employment-related injuries.

ANALYSIS

The Office accepted that appellant sustained an employment-related cellulitis of the right leg based on the February 13, 2006 finding of Dr. Mercora. Appellant's physician, Dr. Brotman, a Board-certified vascular surgeon, completed a report on May 9, 2006 and noted that appellant's

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Bobbie F. Cowart*, 55 ECAB 476 (2004). In *Cowart*, the employee claimed entitlement to a schedule award for permanent impairment of her left ear due to employment-related hearing loss. The Board determined that appellant did not establish that an employment-related condition contributed to her hearing loss and, therefore, it denied her claim for entitlement to a schedule award for the left ear.

[5] *Victor J. Woodhams,* 41 ECAB 345, 351-52 (1989).

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

left leg was swollen at that time following bilateral leg cellulitis. His findings on examination included obesity and prominence of the lower extremity fatty tissues to her heels as well as mild to moderate pitting edema. The examination showed receding discoloration at the calves with no evidence of arterial insufficiency. Dr. Brotman diagnosed lymphedemia and stated that this condition could predispose her to episodes of infectious and noninfectious cellulitis or dermatitis. He suggested that appellant's lymphedemia was a chronic condition.

The Board finds that the medical evidence in the record does not establish that appellant's accepted cellulitis condition caused permanent impairment to her right lower extremity. Dr. Brotman did not state that appellant's diagnoses of lymphedemia was causally related to her employment. He suggested that lymphedemia was a preexisting condition which predisposed appellant to episodes of dermatitis and cellulitis, rather than a consequence of her accepted cellulitis. Dr. Brotman did not address whether appellant's accepted condition of right leg cellulitis was a permanent condition.

Dr. Weiss, an osteopath, evaluated appellant for schedule award purposes. On physical examination, he found pretibial edema in both of appellant's lower extremities and four plus pitting edema bilaterally as well as lymphedema to the level of her knees bilaterally. Dr. Weiss diagnosed contact dermatitis secondary to dust mites with subsequent bacterial infections to both legs and lymphedema with stasis dermatitis to both lower extremities. He diagnosed Class II peripheral vascular disease of the right and left lower extremities, or 39 percent impairment to each lower extremity, under Table 17-38.

Dr. Weiss did not address the causal relationship between appellant's diagnosed peripheral vascular disease and her accepted employment injury. His report does not suggest that appellant developed lymphedema with stasis dermatitis as a result of her employment. Dr. Weiss diagnosed contact dermatitis secondary to dust mites and subsequent bacterial infections; however, the condition accepted by the Office was cellulitis. He did not address how the accepted condition resulted in permanent impairment of either lower extremity. The fact that appellant sustained an infection revelatory of an underlying condition does not raise an inference of causal relation.[8] The diagnosis of Dr. Weiss does not appear to be supported by Dr. Brotman, who found no evidence of venous insufficiency.

The district medical adviser reviewed the medical evidence and found that appellant did not have evidence of peripheral vascular disease, only obesity. He attributed appellant's bilateral swelling to her obesity. The district medical adviser stated, "A superficial cellulitis would not be expected to cause peripheral vascular disease." He disagreed with Dr. Weiss' finding of permanent impairment noting that appellant's findings did not support the classification of impairment.

It is well-established that a claimant is not entitled to a schedule award unless there is medical evidence establishing that the accepted condition caused permanent impairment to the scheduled member.[9] Appellant's attorney argues on appeal that in determining entitlement to a

[8] *See Gary M. DeLeo,* 56 ECAB 656 (2005).

[9] *See Thomas P. Lavin*, 57 ECAB 353 (2006).

schedule award preexisting impairment to the scheduled member is to be included.[10] As noted, however, the fact that an employment-related injury is revelatory of an underlying condition does not raise an inference of causal relation to a nonemployment-related condition. It must be established that the accepted condition of cellulitis resulted in permanent impairment before appellant is eligible for a schedule award. Appellant has not submitted sufficient medical opinion evidence to establish that her accepted employment injury resulted in any permanent impairment. She has not met her burden of proof to establish that she is entitled to a schedule award.

CONCLUSION

The Board finds that appellant has not established that she sustained permanent impairment of a scheduled member due to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[10] *Michael C. Milner*, 53 ECAB 446, 450 (2002).