United States Department of Labor
Employees' Compensation Appeals Board

G.L., Appellant	)	
and	)	**Docket No. 09-1135**
	)	**Issued: January 8, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, 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 March 24, 2009 appellant filed a timely appeal from a January 7, 2009 decision of the Office of Workers' Compensation Programs that denied his claim for 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.

ISSUE

The issue is whether appellant has any impairment caused by his accepted lumbar conditions that would entitle him to a schedule award.

On appeal, appellant contends that the February 20, 2007 report from his attending physician represents the weight of medical opinion.

FACTUAL HISTORY

On June 15, 1999 appellant, then a 46-year-old letter carrier, sustained an employment-related left elbow and hip contusion and lumbosacral strain when he tripped while delivering mail. The Office accepted displacement of a lumbar intervertebral disc without myelopathy and

other joint derangement. It approved surgical procedures on January 26, 2000, April 8, 2002, August 10, 2004 and August 29, 2005.[1] By decision dated August 28, 2006, the Office terminated appellant's compensation benefits, effective September 2, 2006, on the grounds that he refused an offer of suitable work. On January 24, 2007 appellant accepted a limited-duty job offer and returned to work. Following a timely reconsideration request, in an April 13, 2007 decision, the Office determined that the August 28, 2006 termination decision was issued in error.

On May 4, 2007 appellant filed a schedule award claim. In a February 20, 2007 report, Dr. William Watters, III, a Board-certified orthopedic surgeon, rated impairment under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).[2] He found that under Table 15-3 appellant had 13 percent impairment for lumbar herniated disc with radiculopathy and under Table 17-31, 3 percent impairment due to arthritis for zero millimeters right sacroiliac. Dr. Watters added the impairment values to total 16 percent whole person impairment. He submitted treatment notes but did not provide any additional impairment analysis.

The Office referred the record and a statement of accepted facts to Dr. Ronald Blum, an Office medical adviser, for review. In a May 17, 2007 report, the Office medical adviser stated that the information contained in Dr. Watters' report was not adequate to provide an impairment analysis and recommended that appellant be referred for a second opinion evaluation. On June 27, 2008 the Office referred appellant to Dr. James F. Hood, a Board-certified orthopedic surgeon, for a second opinion impairment evaluation.[3] In a July 29, 2008 report, Dr. Hood noted his review of appellant's medical and surgical history and his complaints of back and bilateral leg pain. Lumbar physical examination demonstrated palpable muscle spasm and limitation of motion. Sitting straight leg raise was normal to 90 degrees bilaterally, and appellant was neurologically intact. Dr. Hood provided hip range of motion measurements of 100 degrees of flexion bilaterally; 30 degrees of extension bilaterally; 40 degrees of right abduction and 20 degrees on the left; 20 degrees of adduction bilaterally; 30 degrees of internal rotation bilaterally; and 50 degrees of external rotation on the right and 40 degrees on the left. He advised that appellant had uncomfortable hip pain that did not interfere with daily activity and moderate lower extremity pain with no weakness or atrophy, and no sensory loss or neurological involvement of the lower extremities. Dr. Hood indicated that elbow range of motion was normal and advised that, although appellant had a slight limitation of hip motion, it was not enough to result in any permanent impairment.

In an August 23, 2008 report, a second Office medical adviser noted review of Dr. Hood's report and found that there was no probative medical evidence to support impairment of either lower extremity due to the June 15, 1999 employment injury.

[1] Appellant worked limited duty for periods between the surgical procedures and received appropriate wage-loss compensation.

[2] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[3] The record reflects that appellant retired on February 15, 2008.

By decision dated January 7, 2009, the Office denied appellant's claim for a schedule award, finding that the medical evidence did not establish a compensable impairment.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[4] and section 10.404 of the implementing federal regulations,[5] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*[6] has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[7]

Before the A.M.A., *Guides*, can be utilized, a description of impairment must be obtained from the claimant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[8]

Although the A.M.A., *Guides* include guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under the Act for injury to the spine.[9] In 1960, amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.[10] An impairment should not be considered permanent until the clinical findings indicate that the medical condition is static and well stabilized,[11] and schedule awards for permanent impairment of the whole person are not authorized under the

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] A.M.A., *Guides*, *supra* note 2.

[7] *See Joseph Lawrence, Jr.*, *supra* note 2.

[8] *Patricia J. Penney-Guzman*, 55 ECAB 757 (2004).

[9] *Pamela J. Darling*, 49 ECAB 286 (1998).

[10] *Thomas J. Engelhart*, 50 ECAB 319 (1999).

[11] *Patricia J. Penney-Guzman*, *supra* note 8.

Act.[12] Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment.[13]

ANALYSIS

The Board finds that the case is not in posture for decision. Dr. Watters advised that, under Table 15-3, appellant had 13 percent impairment for a lumbar herniated disc with radiculopathy. As noted, however, a schedule award is not payable under the Act for injury to the spine or of the spine itself.[14] Appellant is not entitled to an impairment rating under Table 15-3. However, he may be entitled to a schedule award for permanent impairment to the lower extremities even though the cause of the impairment originates in the spine.[15] To support an impairment rating based on a spinal injury, the physician must explain the impairment in accordance with Chapter 17 of the A.M.A., *Guides*, which pertains to lower extremity impairments.[16] Dr. Watters indicated that appellant had three percent impairment under Table 17-31 for zero millimeters right sacroiliac. Table 17-31 provides impairment ratings for arthritis impairments based on roentgenographically determined cartilage intervals.[17] Zero millimeters sacroiliac interval represent a three percent whole person impairment, as was noted by the physician, or seven percent lower extremity impairment. The record before the Board, however, does not contain the x-ray study demonstrating this cartilage interval loss.[18] Schedule awards for permanent impairment of the whole person are not authorized under the Act.[19]

In a July 29, 2008 report, Dr. Hood, an Office referral physician, advised that there was no neurological involvement, weakness or atrophy of the lower extremities and that, while appellant had moderate pain, this did not interfere with daily activity. He did not support that appellant had any impairment for lower extremity sensory loss, weakness, atrophy or pain. Dr. Hood provided range of motion findings for appellant's hips. His findings for flexion, extension, adduction, internal and external rotation and right abduction were all within normal ranges as noted in Table 17-9 of the A.M.A., *Guides* and do not establish impairment.[20]

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[12] *D.J.*, 59 ECAB ____ (Docket No. 08-725, issued July 9, 2008).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); *see J.P.*, 60 ECAB ___ (Docket No. 08-832, issued November 13, 2008).

[14] *Pamela J. Darling*, *supra* note 9.

[15] *Thomas J. Engelhart*, *supra* note 10.

[16] A.M.A., *Guides*, *supra* note 2 at 433-564.

[17] *Id*. at 544.

[18] The record contains lumbar spine x-rays dated August 10, 2004 and August 12, 2005 that do not mention the sacroiliac joint. January 6, 2004 and a January 25, 2005 lumbar spine magnetic resonance imaging (MRI) scans noted metallic hardware in the right sacroiliac joint region.

[19] *D.J.*, 59 ECAB ____ (Docket No. 08-725, issued July 9, 2008).

[20] A.M.A., *Guides* 537.

However, Dr. Hood noted left hip abduction of 20 degrees, which represents five percent lower extremity impairment under Table 17-9.[21] The medical evidence reflects that appellant has impairment based on loss of left hip abduction. The case will be remanded to the Office for further consideration of his claim for a schedule award.

CONCLUSION

The Board finds that the case is not in posture for decision on the issue of the extent of impairment related to appellant's accepted injury.

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2009 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for further action in accordance with this opinion of the Board.

Issued: January 8, 2010
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

[21] *Id*.