

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

S.L., Appellant)
and) Docket No. 10-163
U.S. POSTAL SERVICE, POST OFFICE,) Issued: July 13, 2010
Memphis, TN, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 19, 2009 appellant filed a timely appeal from a September 23, 2009 merit decision of the Office of Workers' Compensation Programs denying her schedule award claim. 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 is entitled to a schedule award for an employment-related permanent impairment.

FACTUAL HISTORY

On July 18, 2007 appellant, then a 56-year-old clerk, filed an occupational disease claim alleging that she sustained degenerative disc disease, discitis, lumbar spasm and sciatica due to factors of her federal employment. The Office accepted the claim for an aggravation of sciatica.

On August 6, 2008 appellant filed a claim for a schedule award. She submitted a July 29, 2008 report from Dr. Karen A. Purdy, Board-certified in family practice, who diagnosed degenerative disc disease and anterior spondylosis at L2-3, L3-4 and L4-5. She stated:

“[Appellant] has L5 nerve root irritation from intervertebral disc disease at L4-L5. She has disc protrusion at L5, and this results in some impingement upon the left S1 nerve root. These abnormalities cause her to have pain, weakness, and numbness if aggravated by inappropriate lifting or movement. These are descriptions of her functional loss and impairment [and] are in accordance with the [American Medical Association, *Guides to the Evaluation of Permanent Impairment*, 5th ed. 2001] (A.M.A., *Guides*) regarding the evaluation of permanent impairment. I feel that she has reached maximum improvement of her condition, and that her present limitations of 50 percent are allowing her to continue working at this time.”

On August 11, 2008 the Office informed appellant that the Federal Employees' Compensation Act¹ (the Act) did not provide for a schedule award for the back. It advised that if she claimed an impairment to an extremity due to her back injury she should specify the extremity claimed and submit supporting medical evidence. On September 4, 2008 the Office requested that Dr. Purdy provide an opinion regarding the extent of any permanent impairment of the right lower extremity due to the accepted work injury.

By decision dated January 9, 2009, the Office denied appellant's claim for a schedule award.² It noted that it had requested but not received additional information from appellant and Dr. Purdy.

On June 19, 2009 appellant requested reconsideration. She submitted an April 13, 2009 electromyogram and nerve conduction study showing right L5-S1 radiculopathy.

On August 19, 2009 an Office medical adviser reviewed the evidence of record and recommended a second opinion examination. On August 27, 2009 the Office referred appellant to Dr. Bret Sokoloff, a Board-certified orthopedic surgeon, for a second opinion examination. In a September 9, 2009 impairment evaluation, Dr. Sokoloff diagnosed a degenerative condition of the lumbar spine with a “suggestion of L5-S1 radiculopathy on the right from [a] bulging annulus fibrosis at L4-L5.” He noted that appellant indicated that she injured herself in March 2007 “laying sod in her yard and lifting.” Dr. Sokoloff stated, “On questioning [appellant] about her story, she actually only had an injury while at home working in the yard. She did not note problems with her back prior to that or at work, but states that her physician told her that the injury could not have come from a single episode.” On examination he found intact

¹ 5 U.S.C. §§ 8101-8193.

² The Office resent the decision on June 2, 2009 to appellant's new address.

sensation and full motor strength in the bilateral lower extremities with some “tenderness in the L3 region and on the right side.” Dr. Sokoloff stated:

“[Appellant] did not have any injury that arose from work. This is really external to the work environment. This is degenerative in nature, and the preceding accident happened at home while working in her yard. [Appellant] was led to believe that chronic use of her back at work caused the problem, but [she] had not, in her discussion with me, noted that previously.

“With regards to impairment rating for the lower extremities, there is no impairment of the lower extremities. [Appellant] currently has full strength, full sensation, no pain, no radicular findings, no atrophy, and full function. She is at maximum medical improvement for her work-related injury, which was the aggravation of sciatica. That currently is not present at all, and there is no residual evidence for that.”

Dr. Sokoloff found that, pursuant to the sixth edition of the A.M.A., *Guides*, appellant had no impairment.

On September 22, 2009 an Office medical adviser concurred with Dr. Sokoloff’s opinion that appellant had no impairment of the lower extremities as she had no loss of strength, sensation, atrophy or function.

By decision dated September 23, 2009, the Office denied modification of its January 9, 2009 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act,³ and its implementing federal regulations,⁴ 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

It is the claimant's burden to establish that he or she has sustained a permanent impairment of the scheduled member or function as a result of any employment injury.⁷ Office procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of maximum medical improvement), describes the impairment in sufficient detail so that it can be visualized on review and computes the percentage of impairment in accordance with the A.M.A., *Guides*.⁸

ANALYSIS

The Office accepted that appellant sustained an aggravation of sciatica due to factors of her federal employment. On August 6, 2008 appellant filed a claim for a schedule award and submitted a July 29, 2008 impairment evaluation from Dr. Purdy who diagnosed a disc protrusion at L5 causing impingement of the left S1 nerve root. Dr. Purdy found that appellant had 50 percent impairment according to the fifth edition of the A.M.A., *Guides*. She, however, did not identify the part of the body that had 50 percent impairment or reference any tables or pages of the A.M.A., *Guides* in reaching her conclusion. As Dr. Purdy's opinion is not in conformance with the A.M.A., *Guides*, it is of little probative value.⁹

In an impairment evaluation dated September 9, 2009, Dr. Sokoloff, an Office referral physician, diagnosed a degenerative lumbar condition with possible right L5-S1 radiculopathy from an L4-5 annulus fibrosis. He discussed appellant's history of an injury at home in March 2007. Dr. Sokoloff found that appellant had no loss of sensation or motor strength in either lower extremity but had some tenderness at L3 on the right. He noted that appellant's injury arose at home rather than work. Dr. Sokoloff determined that appellant had no impairment of the lower extremities based on his finding of "full strength, full sensation, no pain, no radicular findings, no atrophy and full function." He opined that she was at maximum medical improvement for her accepted condition of an aggravation of sciatica and that she had no evidence of any impairment under the sixth edition of the A.M.A., *Guides*. On September 22, 2009 an Office medical adviser reviewed and concurred with Dr. Sokoloff's findings. The Board finds that Dr. Sokoloff's opinion constitutes the weight of the medical evidence as he submitted a thorough report based upon a complete and accurate factual and medical history. He performed a complete evaluation and found no evidence of an impairment of either lower extremity due to the accepted condition of an aggravation of sciatica. As Dr. Sokoloff's opinion represents the weight of the medical evidence, the Office properly denied appellant's claim for a schedule award.

⁷ *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(b) (January 2010).

⁹ *Carl J. Cleary*, 57 ECAB 563 (2006); *Richard A. Neidert*, 57 ECAB 474 (2006).

CONCLUSION

The Board finds that appellant has not established that she is entitled to a schedule award for an employment-related permanent impairment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 23, 2009 is affirmed.

Issued: July 13, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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