United States Department of Labor
Employees' Compensation Appeals Board

L.F., Appellant	)	
and	)	**Docket No. 10-343**
	)	**Issued: November 29, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Charleston, WV, Employer	)	

Appearances:
Appellant, pro se
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 November 13, 2009 appellant filed a timely appeal from a May 20, 2009 merit decision of the Office of Workers' Compensation Programs denying her claim for a schedule award.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of the Office's decision. *See* 20 C.F.R. § 501.3(f)(2). As the Office's decision was issued on May 20, 2009, the 180-day computation begins May 21, 2009. Since using November 18, 2009, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is November 13, 2009, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] Although the May 20, 2009 decision purports to be a nonmerit decision denying reconsideration, the Office reviewed the merits of appellant's claim. Accordingly, the Board will exercise jurisdiction over the merits of the case. *See Delphyne L. Glover*, 51 ECAB 146 (1999).

ISSUE

The issue is whether appellant has established that she is entitled to a schedule award.

FACTUAL HISTORY

On December 13, 2001 appellant, then a 36-year-old window clerk, injured her low back in the performance of duty. She stopped work on December 18, 2001. The Office accepted the claim for lumbar strain/sprain, degeneration of a lumbar intervertebral disc and displacement of a lumbar intervertebral disc without myelopathy.[3]

On December 16, 2008 appellant filed a claim for a schedule award. By letter dated January 12, 2009, the Office requested that she submit an impairment evaluation from her attending physician in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*).

By decision dated February 20, 2009, the Office denied appellant's claim for a schedule award. It found that she had not submitted medical evidence addressing the extent of any employment-related permanent impairment.

In a report dated April 26, 2009, Dr. Anna G. Patton, Board-certified in family practice, discussed appellant's history of laminectomies at L4-5 in 1994 and 1996. She diagnosed an aggravation of a degenerated lumbar disc resulting in back pain and attributed the condition to the December 13, 2001 work injury. Dr. Patton found that appellant had reached maximum medical improvement in March 2008. She opined that the low back pain and lower extremity pain "results in a total disability of 25 [percent] in both the right and left lower extremities."

On May 12, 2009 appellant requested reconsideration.

By decision dated May 20, 2009, the Office denied modification of its finding that appellant had not established entitlement to a schedule award.[4] It determined that Dr. Patton's opinion did not conform to the guidelines for impairment evaluations.

On appeal appellant contends that she continues to experience low back pain from degenerative disc disease as a result of her December 13, 2001 work injury.

[3] By decision dated December 18, 2007, the Office terminated appellant's compensation and authorization for medical treatment on the grounds that she had no further disability due to her accepted employment injury. On February 6, 2008 it denied her request for an oral hearing on the December 18, 2007 termination decision as untimely.

[4] As previously noted, the Office asserted that it was denying appellant's request for reconsideration under section 8128 but weighed the evidence submitted and thus reviewed the merits of her claim.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,[5] and its implementing federal regulations,[6] 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.[7] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[8]

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.[9] 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*.[10]

ANALYSIS

The Office accepted that appellant sustained lumbar strain and degeneration and displacement of a lumbar intervertebral disc due to a December 13, 2001 work injury. On December 16, 2008 appellant filed a claim for a schedule award. By decision dated February 20, 2009, the Office denied her schedule award claim after finding that she had not submitted an impairment evaluation.

On May 12, 2009 appellant requested reconsideration. She submitted an April 26, 2009 report from Dr. Patton, who diagnosed an aggravation of lumbar disc disease due to her work injury. Dr. Patton opined that appellant had total disability of 25 percent in each lower extremity due to back pain and pain in the lower extremities. She did not, however, refer to the A.M.A., *Guides* or to any specific findings on examination to support her rating. As Dr. Patton did not

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id*. at § 10.404(a).

[8] FECA Bulletin No. 09-03 (issued March 15, 2009); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[9] *Tammy L. Meehan*, 53 ECAB 229 (2001).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(b) (August 2002).

explain the protocols used in making the impairment determination, her opinion is insufficient to establish that appellant has a permanent impairment.[11]

Appellant has not submitted sufficient evidence to establish that, as a result of her employment injury, she sustained any permanent impairment to a scheduled member or function such that she would be entitled to a schedule award. The medical evidence must include a description of any physical impairment in sufficient detail so that the claims examiner and others reviewing the file would be able to clearly visualize the impairment and the resulting restrictions and limitations.[12] Appellant did not submit such evidence and the Office properly denied her schedule award claim.

On appeal, appellant argues that she continues to experience back pain due to her work injury.[13] It is her burden of proof, however, to establish that she sustained permanent impairment to a scheduled member as a result of her employment injury through the submission of probative medical evidence.[14]

CONCLUSION

The Board finds that appellant has not established that she is entitled to a schedule award.

[11] *See Carl J. Cleary*, 57 ECAB 563 (2006) (an opinion which is not based upon the standards adopted by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of permanent impairment.

[12] *See A.L.*, 60 ECAB ___ (Docket No. 08-1730, issued March 16, 2009).

[13] Appellant submitted new medical evidence with her appeal. The Board has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c)(1).

[14] *See Tammy L. Meehan*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 20, 2009 is affirmed.

Issued: November 29, 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