

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

M.P., Appellant)

and)

**FEDERAL JUDICIARY, ADMINISTRATIVE)
OFFICE OF THE U.S. COURTS,)
Washington, DC, Employer)**

**Docket No. 10-437
Issued: November 19, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 December 7, 2009 appellant filed a timely appeal from a November 4, 2009 Office of Workers' Compensation Programs' schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established permanent impairment to his left leg related to his accepted November 7, 1997 work injury.

FACTUAL HISTORY

This case has previously been before the Board. In a November 12, 2004 decision, the Board affirmed a December 12, 2003 Office decision finding that appellant failed to establish a recurrence of disability on or after January 12, 1998 causally related to his accepted November 7, 1997 employment-related lumbar sprain.¹ The Board found that the March 24, 2001 nonwork-

¹ Docket No. 04-1057 (issued November 12, 2004).

related motor vehicle accident was a separate, independent intervening factor that was not compensable. It also found that appellant submitted no rationalized medical evidence to substantiate that his current spinal conditions or his disc herniation at the L2-3 level, which necessitated back surgeries of November 9, 2001 and May 12, 2003, were causally related to the November 7, 1997 employment injury. The facts of the case as set forth in the Board's prior decision are hereby incorporated by reference.

On February 13, 2009 appellant filed a Form CA-7 claim for a schedule award.

In a March 30, 2009 letter, the Office advised appellant that his request for a schedule award could not be processed as no evidence had been submitted to support that he sustained any permanent impairment as a result of his accepted lumbar strain. It advised him that schedule awards may not be paid for impairment to the back, but could be paid for impairment of the lower extremities. The Office requested that appellant provide a current well-rationalized report from his physician which provided an opinion on permanent impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). A permanent impairment worksheet for the lower extremity was attached.

On May 11, 2009 the Office received an April 21, 2009 letter from Dr. Timothy Morley, an osteopath, addressed to appellant's attorney. Dr. Morley advised that he had examined appellant and noted significant disc pathology with fractures of the spine. Counsel was requested to contact Dr. Morley to discuss the case.

By decision dated May 11, 2009, the Office denied appellant's schedule award claim. It found the evidence insufficient to establish permanent impairment due to the accepted lumbar spine.

In a May 14, 2009 letter, appellant's attorney requested a telephonic hearing, which was held on September 10, 2009. Appellant testified that he experienced symptoms of weakness and numbness prior to his nonwork-related motor vehicle accidents, which magnified the situation. He testified that his physical therapist told him that his pain and discomfort were from his workers' compensation injury. The employing establishment did not provide any comments to the hearing transcript.

In an August 12, 2009 report, Dr. Stuart J. Goodman, a Board-certified neurologist, noted the history of appellant's November 7, 1997 work injury and discussed appellant's medical treatment and surgical history beginning in 2000 for complaints of low back pain. He presented findings on examination. Dr. Goodman opined that appellant has a chronic persistent permanent low back injury, predominantly involving the left lower extremity at L5 dermatome for which appellant underwent two major surgeries, one on May 12, 2003 and a subsequent surgical procedure to correct a secondary scoliosis. Under the A.M.A., *Guides*, Dr. Goodman opined that appellant had 15 percent permanent impairment of the left lower extremity. He assigned appellant a Class 3 under Table 17.4, page 570. Dr. Goodman indicated that Figure 17.2 resulted in a class diagnosis number four after calculations. He assessed a grade modifier of four under Table 17.7, page 576 and under Table 17.10, page 582, assigned an impairment class of three.

Dr. Goodman also stated that appellant reached maximum medical improvement one year after his last spine surgery.

By decision dated November 4, 2009, an Office hearing representative affirmed the Office's prior decision denying appellant's schedule award claim.

LEGAL PRECEDENT

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.²

Section 8107 of the Federal Employees' Compensation Act³ provides schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. No schedule award is payable for a member, function or organ of the body not specified in the Act or regulations.⁴ Because neither the Act nor the regulations authorize a schedule award for the permanent impairment of the spine, neck or back,⁵ no claimant is entitled to such an award.⁶ However, because the specified members include the upper and lower limbs, a claimant may be entitled to a schedule award for permanent impairment to a limb even though the cause of the impairment originated in the spine.⁷

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.⁸

The A.M.A., *Guides* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁹ Effective May 1, 2009, the

² *Veronica Williams*, 56 ECAB 367 (2005).

³ 5 U.S.C. § 8107.

⁴ *William Edwin Muir*, 27 ECAB 579 (1976).

⁵ The Act itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

⁶ *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).

⁷ *Rozella L. Skinner*, 37 ECAB 398 (1986).

⁸ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁹ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

Office began using the sixth edition of the A.M.A., *Guides* published in 2008 to calculate schedule awards.¹⁰

ANALYSIS

The Board finds that the Office properly denied appellant's claim for a schedule award.

Dr. Goodman's August 12, 2009 report does not establish that appellant's left lower extremity impairment was due to his November 7, 1997 work injury, accepted for a lumbar sprain. He did not provide a sufficient medical opinion establishing such a relationship. Dr. Goodman fails to provide a clear opinion on causal relationship. He stated that he primarily reviewed records related to appellant's treatment in 2001 and 2003, when appellant underwent lumbar commentaries at L2-3, only in passing, did the physician note that appellant related an injury on November 7, 1997.¹¹ However, Dr. Goodman did not indicate any awareness that the only accepted condition at that time was a lumbar sprain. He did not address any of appellant's nonwork-related motor vehicle accidents.¹² The Board's prior decision found that appellant's March 24, 2001 nonwork-related motor vehicle accident was a separate, independent intervening factor and there was no evidence to substantiate that appellant's current spinal conditions or his disc herniation at the L2-3 level, which necessitated the two back surgeries, were causally related to the November 7, 1997 employment injury. Dr. Goodman did not otherwise explain how the accepted lumbar sprain would cause permanent impairment or address his impairment rating in relation to appellant's nonaccepted back injuries. Therefore, his opinion is insufficient to establish that appellant's 1997 lumbar sprain caused or contributed to any permanent impairment to his left leg.

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.¹³ It must be established that the accepted condition of lumbar strain resulted in permanent impairment before appellant is eligible for a schedule award. Appellant has not submitted sufficient medical opinion evidence to establish that his accepted lumbar sprain resulted in any permanent impairment. He has not met his burden of proof to establish that he is entitled to a schedule award.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and 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).

¹¹ *See S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹² *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

¹³ *See Thomas P. Lavin*, 57 ECAB 353 (2006).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he is entitled to a schedule award in connection with his accepted claim.

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 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