United States Department of Labor
Employees' Compensation Appeals Board

G.N., Appellant	)	
and	)	
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Chicago, IL, Employer	)	**Docket No. 10-850** **Issued: November 12, 2010**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 5, 2010 appellant filed a timely appeal from a January 21, 2010 merit decision of the Office of Workers' Compensation Programs granting her a schedule award.[1] 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 has more than a three percent permanent impairment of each lower extremity.

[1] Subsequent to appellant's filing of her appeal on February 5, 2010, the Office issued a decision dated March 5, 2010 denying her request for reconsideration. The Board and the Office may not have simultaneous jurisdiction over the same issue in a case. Consequently, any decision by the Office on an issue pending before the Board is null and void. *Douglas E. Billings*, 41 ECAB 880 (1990). *See also George H. Thomas*, 2 ECAB 88 (1998).

FACTUAL HISTORY

On March 28, 2008 appellant, then a 45-year-old food service worker, filed a claim alleging that on March 24, 2008 she broke her right ankle in the performance of duty. The Office accepted the claim for a closed bimalleolar fracture of the right ankle and authorized an open reduction and internal fixation of the fracture. Appellant stopped work on March 24, 2008 and resumed her regular employment on July 22, 2008.

In a report dated April 30, 2009, Dr. Mark Sokolowski, a Board-certified orthopedic surgeon, noted appellant's symptoms of back pain with radiculopathy after her March 24, 2008 fall, aggravated by her altered gait. He diagnosed an annual tear at L4-5 with radiculopathy by magnetic resonance imaging (MRI) scan. On physical examination, Dr. Sokolowski noted that appellant had full strength in her lower extremities, but decreased sensation of the left lower extremity.

In June 2009, the Office expanded acceptance of appellant's claim to include an annual tear at L4-5 and lumbar radiculopathy.

On September 25, 2009 appellant filed a claim for a schedule award. By letter dated October 1, 2009, the Office requested that she submit an impairment evaluation from her attending physician determining the extent of any lower extremity impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008) (A.M.A., *Guides*).

On October 22, 2009 Dr. Steven W. Miller, a podiatrist, found mild edema of the lateral ankle without pain on palpation or with movement. He measured reduced strength and range of motion on the left with full sensation. Dr. Miller also noted that appellant had radiculopathy and pain. He opined that she had reached maximum medical improvement and referred her for a functional capacity evaluation.

A December 3, 2009 functional capacity evaluation indicated that appellant experienced right ankle swelling and reduced range of motion and strength. In a report dated December 23, 2009, Dr. Miller noted that she complained of swelling and pain in her right ankle with prolonged activity. On examination, he found a neurovascularly intact right ankle and foot with mild edema, weakness and stiffness, but no pain. Dr. Miller diagnosed status post ankle fracture and listed work restrictions.

On January 13, 2010 an Office medical adviser reviewed the medical evidence. He noted that the December 23, 2009 functional capacity evaluation showed that appellant had continued right ankle pain and stiffness resulting in difficulty with her gait and extensive standing. The Office medical adviser stated, "According to the most recent notes, the claimant has continued left lower extremity symptoms that correspond to L4-5 left lower extremity radiculopathy." Citing to Table 16-12 on page 501 of the sixth edition of the A.M.A., *Guides*, he concluded that appellant had a three percent right lower extremity impairment for the right ankle fracture and a three percent permanent impairment of the left lower extremity due to "radicular symptoms in a sciatic distribution."

By decision dated January 21, 2010, the Office granted appellant a schedule award for a three percent permanent impairment of each lower extremity. The period of the award ran for 17.28 weeks from October 22, 2009 to February 19, 2010.

On appeal, appellant contends that she is entitled to a greater award because of her continued problems with her ankle and difficulties performing the activities of daily living.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing federal regulations,[3] 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.[4] For Office decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used for evaluating permanent impairment.[5]

In addressing lower extremity impairments, the sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).[6] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[7]

ANALYSIS

The Office accepted that appellant sustained a right ankle fracture and an annual tear at L4-5 with radiculopathy due to a March 24, 2008 employment injury. On September 25, 2009 appellant filed a claim for a schedule award. In a report dated April 30, 2009, Dr. Sokolowski noted that she had decreased sensation of the left lower extremity. In a report dated October 22, 2009, Dr. Miller found edema of the ankle without pain and reduced strength and loss of range of motion on the left side. On December 23, 2009 he noted that appellant experienced right ankle swelling and pain with extensive activity and listed findings of mild edema, pain and weakness. Neither Dr. Sokolowski nor Dr. Miller provided an impairment finding or reference the A.M.A., *Guides* and thus these reports are of little probative value.

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[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Id*. at § 10.404(a).

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

[6] A.M.A., *Guides* at 494-531; *see also J.B.*, 61 ECAB ___ (Docket No. 09-2191, issued May 14, 2010).

[7] *Id*. at 521.

On January 13, 2010 an Office medical adviser found that appellant had a three percent impairment of the right ankle due to her right ankle fracture according to Table 16-12 of the A.M.A., *Guides*. He did not, however, explain how he reached his conclusion. The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation. It requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).[8] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). The Office medical adviser identified only the table used without providing any explanation of the diagnosis category, class rating or evaluation of the grade modifiers. As discussed, grade modifiers should be considered for functional history, physical examination and clinical studies and these grade modifiers can change the extent of a given impairment rating.[9] Consequently, the Board finds that the opinion of the Office medical adviser requires further clarification on the issue of appellant's right lower extremity impairment.

The Office medical adviser further determined that appellant had a three percent permanent impairment of the left lower extremity under Table 16-12 due to radiculopathy at L4-5. Again, he did not identify the medical evidence that he relied upon in finding that appellant had a permanent impairment of the left lower extremity due to her work injury. Office procedures and Board precedent require that the record contain a medical report with a detailed description of the impairment.[10] 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.[11] There is no medical report clearly describing permanent left lower extremity impairment due to appellant's employment injury.

The Office medical adviser did not explain how he applied the sixth edition of the A.M.A., *Guides* in reaching his left lower extremity impairment determination. The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. Recognizing that certain jurisdictions, such as under the Act, mandate ratings for extremities and preclude ratings for the spine, the A.M.A., *Guides* has offered an approach to rating spinal nerve impairments consistent with sixth edition methodology.[12] The Office has adopted this approach for rating impairment to the upper or lower extremities caused by a spinal injury.[13] The Board will remand the case for proper application of the A.M.A., *Guides* for further development of the evidence to determine whether appellant is entitled to a schedule award for a permanent impairment of the left lower extremity.

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[8] *Id*. at 494-531.

[9] *Id*. at 515-18.

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c)(1) (August 2002); *Peter C . Belkind*, 56 ECAB 580 (2005).

[11] *Vanessa Young*, 55 ECAB 575 (2004).

[12] Rating Spinal Nerve Extremity Impairment Using the Sixth Edition, the A.M.A., *Guides Newsletter* (A.M.A., *Guides* Chicago, IL), July/August 2009.

[13] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010) (Exhibit 1, 4).

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 21, 2010 is set aside. The case is remanded for further proceedings consistent with this opinion of the Board.

Issued: November 12, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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