United States Department of Labor
Employees' Compensation Appeals Board

T.T., Appellant	)	
and	)	**Docket No. 10-1841**
	)	**Issued: April 19, 2011**
U.S. POSTAL SERVICE, POST OFFICE, St. Ann, MO, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 7, 2010 appellant filed a timely appeal from a May 10, 2010 merit decision of the Office of Workers' Compensation Programs denying his schedule award claim. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established entitlement to a schedule award due to his accepted condition of inguinal hernia with repair.

FACTUAL HISTORY

On September 8, 2004 appellant, then a 44-year-old letter carrier, was injured when he lifted a tray of mail. The Office accepted the condition of bilateral inguinal hernia with surgical repair. Appellant stopped work on September 10, 2004. He underwent right inguinal hernia

[1] 5 U.S.C. §§ 8101-8193.

repair with mesh on October 18, 2004. Appellant returned to limited duty on November 19, 2004 and regular duty on December 24, 2004. The Office paid appropriate benefits.

Following his surgery, appellant continued to experience right inguinal and testicular pain. He underwent a urological evaluation and began pain management therapy with an anesthesiologist.

On June 27, 2007 appellant requested a schedule award. In a July 13, 2007 letter, the Office informed him of the medical evidence necessary to support a schedule award to a scheduled member and requested that he obtain a detailed medical report from his treating physician. In an August 6, 2007 statement, appellant advised he was undergoing treatment for left-sided testicular pain. He requested the Office refer him for an evaluation as his doctor did not perform impairment evaluations.

On December 2, 2007 an Office medical adviser reviewed appellant's file and a statement of accepted facts. He indicated that the medical evidence of record was insufficient to support permanent impairment to a scheduled member due to the accepted condition. The medical adviser noted that, while appellant was seeking treatment for left-sided testicular pain, the Office could only consider an impairment that resulted from the right-sided inguinal hernia repair. He also advised that groin pain was not ratable for schedule award purposes under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The medical adviser recommended appellant be referred for an impairment rating evaluation.

In a February 5, 2008 report, Dr. Richard H. Still, a urologist and Office referral physician, noted the history of injury and medical treatment and set forth his examination findings which revealed tenderness in the right testis and epididymus, a tender cord, and tenderness in the inguinal area that reproduced appellant's pain and symptoms. He provided an impression of chronic right inguinal/testicular pain, probable postoperation cicatrix with nerve entrapment; possible chronic epididymitis and left varicocele per previous ultrasound. Dr. Still requested a copy of the previous computerized tomography (CT) scan and recommended right inguinal exploration to release the cicatrix and nerve entrapment. In an April 3, 2008 report, he opined that appellant suffered from chronic right inguinal scrotal and testicular pain from apparent scar and nerve entrapment from the previous right inguinal hernia repair. Dr. Still stated that appellant had not reached maximum medical improvement as he could benefit from right inguinoscrotal exploration surgery with release of cicatrix and nerve entrapment.

On April 20, 2008 an Office medical adviser reviewed Dr. Still's reports. He noted that Dr. Still's evaluation did not show any ilioinguinal or nerve entrapment symptoms which affected either inner thigh; thus, there was no anatomical cause of lower extremity impairment. The Office medical adviser also noted that the Office had not accepted a testicular condition and opined, based on Dr. Still's report, there was no reason to do so. He thus concluded that there was no impairment to each lower extremity based on Dr. Still's reports.

By decision dated April 25, 2008, the Office denied appellant's claim for a schedule award based on the Office medical adviser's opinion.

Appellant requested an oral hearing that was held on December 18, 2008. By decision dated March 3, 2009, an Office hearing representative set aside the April 25, 2008 decision and remanded the case for further medical development. The hearing representative noted that the medical record supported that appellant's right testicular pain was causally related to the inguinal surgery and, since he was not considering additional surgery, the Office should develop the schedule award request for impairment to the testicles. The hearing representative noted that, since Dr. Still did not offer an opinion on this issue, a supplemental report must be obtained. The hearing representative further found that the Office must develop the issue of whether appellant's testicular pain resulted in a ratable impairment.

On remand, the Office provided Dr. Still with a statement of accepted facts and a list of supplemental questions, and requested that he provide a supplemental report. In a March 6, 2009 report, Dr. Still advised that, if appellant elected not to proceed with further surgery then, based on his last evaluation, maximum medical improvement had been reached. He indicated that he was not sure of any impairment to the testicles, but stated appellant had chronic pain secondary to nerve entrapment and associated neuropathy. Dr. Still further advised that any estimate of permanent impairment would be difficult to estimate as he has not seen appellant in some time and was not aware of his current situation.

Dr. Stills reexamined appellant on April 7, 2009. He reported that the testes were descended without masses, but there was tenderness on the right. Tenderness and scarring were noted in the right inguinal canal consistent with appellant's history of inguinal surgery, which was causing chronic pain. Dr. Stills advised the left canal was intact. In an April 19, 2009 report, he opined that, under Table 7.7 of the fifth edition of the A.M.A., *Guides*, appellant had a Class 1, or 0 to 10 percent, impairment of the whole person.

In an April 26, 2009 report, an Office medical adviser reviewed Dr. Still's reports and opined that Dr. Still offered no medical basis to offer a schedule award as a consequence of the accepted condition. He indicated that the Office only accepted the condition of bilateral inguinal hernias. The Office medical adviser noted that Dr. Still repeatedly found appellant had no groin pain and there were no examination findings which implicate a testicular lesion. He further stated that an inguinal nerve entrapment would not be a basis to process a schedule award for a testicle.

In an April 28, 2009 decision, the Office denied appellant's claim for a schedule award. Determinative weight was accorded to the Office medical adviser's opinion.

On March 21, 2010 appellant requested reconsideration. With his request, he submitted a March 23, 2010 statement along with duplicative copies of February 24 and April 25, 2005 consultation reports previously of record. New evidence included: procedure notes dated July 28 and November 30, 2005, January 15 and 16, 2006; a July 29, 2005 post procedure telephone call record; hospital record from Washington University in St. Louis covering the periods January 17 to February 26, 2006 and April 25, 2005 to January 16, 2006; and copies of notes from the pain management center dated February 28, 2005 through April 28, 2006, which documented the various procedures appellant underwent to manage his chronic condition.

On May 5, 2010 an Office medical adviser reviewed the submitted evidence and stated that it did not permit processing of a schedule award.

By decision dated May 10, 2010, the Office denied modification of the April 28, 2009 decision.

LEGAL PRECEDENT

The schedule award provision of the 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] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[5]

The Act does not authorize schedule awards for permanent impairment of the whole person.[6] No schedule award is payable for a member, function or organ of the body not specified in the Act or in the regulations.[7] Amendments to the Act, however, 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. Pursuant to the authority provided by 5 U.S.C. § 8107(c)(22), the Secretary added as organs to the compensation schedule to include the breast, kidney, larynx, lung, tongue, penis, testicle, ovary, uterus/cervix and vulva/vagina.[8]

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter.[9] While the claimant has the responsibility to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that

[2] *Id.* at § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Id*. at § 10.404(a).

[5] 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).

[6] *Ernest P. Govednick*, 27 ECAB 77 (1975); *W.D.*, Docket No. 10-274 (issued September 3, 2010).

[7] *See Janet C. Anderson*, 54 ECAB 394 (2003); *William Edwin Muir*, 27 ECAB 579 (1976); *W.D., id.*

[8] 5 U.S.C. § 8107; 20 C.F.R. § 10.404; *J.W.*, 59 ECAB 308 (2008).

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

justice is done.[10] Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.[11]

ANALYSIS

The Board finds that further development is required on the issue of whether appellant has testicular impairment causally related to his accepted inguinal surgery.

Dr. Still, an Office referral physician, reported that appellant's April 7, 2009 examination revealed tenderness and scarring in the right inguinal canal consistent with his history of inguinal surgery. He opined that such conditions caused appellant's chronic pain and subsequently rated him with 0 to 10 percent whole person impairment under the fifth edition of the A.M.A., *Guides*.[12] An Office medical adviser, on April 26, 2009, rejected this rating on the basis the Office had not accepted a consequential injury. He also asserted that inguinal nerve entrapment would not be a basis for a schedule award for a testicle. Following, appellant's reconsideration request, the same medical adviser, in a May 6, 2010 report, found no basis to process a schedule award. He did not purport to rate impairment under the sixth edition of the A.M.A., *Guides*. The Board notes that an Office hearing representative specifically found that the medical evidence supported that appellant's right testicular and scrotal pain was related to appellant's accepted hernia and surgical repair and directed the Office to obtain an opinion on whether appellant had permanent impairment of his testicles due to this. Under the Office's regulations, a schedule award may be paid for impairment to a testicle.[13]

The Board finds further development is required. Although the Office medical adviser found no ratable impairment asserting that inguinal nerve entrapment would not be a basis for a schedule award for a testicle, he did not clearly provide rationale for his conclusion.[14] He did not explain why testicular pain resulting from accepted hernia surgery was not ratable under the A.M.A., *Guides* in either of his most recent reports. As Dr. Still's reports were issued before the sixth edition of the A.M.A., *Guides* became effective, he did not rate impairment under the current edition of the A.M.A., *Guides*, which contains provisions relating to the testicles in Chapter 7.[15] Furthermore Chapter 3 of the sixth edition of the A.M.A., *Guides*, provides for rating pain-related impairment for a painful condition that cannot be rated according to the principles outlined in other chapters.[16] The Board notes that the current medical record is

[10] *Richard E. Simpson*, 55 ECAB 490 (2004).

[11] *Melvin James*, 55 ECAB 406 (2004).

[12] Although the A.M.A., *Guides*, list certain impairment ratings in terms of whole person impairment, the Act does not authorize schedule awards for permanent impairment of the whole person. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

[13] *Supra* note 3.

[14] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[15] *See e.g.*, A.M.A., *Guides* 146-49 (6th ed. 2008).

[16] *Id.* at 39.

insufficiently developed to determine if appellant has ratable impairment of the testicles under applicable provisions of the A.M.A., *Guides.*

On remand, the Office should refer appellant and the case record to Dr. Still for clarification on these matters. If Dr. Still finds a work-related testicular impairment, he should determine the appropriate impairment percentage of the testicle using the sixth edition of the A.M.A., *Guides*. After such further development as the Office deems necessary, the Office should issue an appropriate decision on appellant's claim.[17]

CONCLUSION

The Board finds that further development of the medical evidence is required on the issue of whether appellant has any testicular impairment.

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further development on the issue of testicular impairment in conformance with this decision.

Issued: April 19, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

[17] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4d(2) and 3.700, Exhibit 1: Use of the sixth edition of A.M.A., *Guides* (January 2010) (explaining conversion of whole person impairment to schedule organ impairment and proper usage of the sixth edition).