

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

C.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Wood River, IL, Employer)

**Docket No. 11-198
Issued: August 3, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 2, 2010 appellant timely appealed the October 20, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed a schedule award. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has a ratable impairment of the right lower extremity and greater than four percent impairment of the left lower extremity.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

Appellant, then a 53-year-old customer service supervisor, has an accepted claim for lumbar sprain, which arose on or about January 20, 2009.² He filed a claim for a schedule award (Form CA-7) on May 22, 2009. In a report dated September 11, 2009, Dr. Randall J. Rogalsky, a Board-certified orthopedic surgeon, found a whole person impairment of “approximately” 27 percent pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2001). The rating included 13 percent whole person impairment based on a diagnosis-related estimate Lumbar Category III impairment.³ Dr. Rogalsky also rated appellant for loss of motion and spinal nerve root impairment L5-S1.⁴

On January 20, 2010 the district medical adviser (DMA) reviewed the record, including Dr. Rogalsky’s report, and found four percent impairment of the left lower extremity and zero impairment of the right lower extremity. He applied the sixth edition of the A.M.A., *Guides* (2008), which OWCP adopted effective May 1, 2009. Citing Table 16-12, “Peripheral Nerve Impairment-Lower Extremity Impairments,” A.M.A., *Guides* 534-36 (6th ed. 2008), the DMA indicated that appellant had four percent impairment due to left lower extremity sciatic nerve symptoms. He found no impairment of the right lower extremity because appellant’s symptoms were reportedly due to an unrelated right knee medial meniscus tear.

By decision dated April 20, 2010, OWCP granted a schedule award for four percent impairment of the left lower extremity. The award covered a period of 11.52 weeks from September 11 to November 30, 2009. OWCP found zero impairment of the right lower extremity.

Appellant requested an oral hearing, which was held on August 4, 2010. OWCP’s hearing representative acknowledged that when he looked at the DMA’s report it was not clear how the DMA came up with the four percent impairment rating for the left lower extremity. He specifically stated that he did not think the DMA’s report was “well explained.” OWCP’s hearing representative also suggested that further development was necessary because of the noted deficiency in the DMA’s January 20, 2010 report.

In a decision dated October 20, 2010, OWCP’s hearing representative affirmed OWCP’s April 20, 2010 decision. He found that, while the DMA’s January 20, 2010 report “[was] not fully explained,” there was no medical evidence of record refuting the DMA’s four percent impairment rating. Consequently, OWCP’s hearing representative determined that appellant had not established that he had greater than four percent impairment of the left lower extremity.⁵

² Appellant has a prior history of lumbar herniated disc and he had previously undergone a left L5-S1 microdiscectomy in February 2008.

³ See Table 15-3, A.M.A., *Guides* 384 (5th ed. 2001).

⁴ See Tables 15-8, 15-9 and 15-18, A.M.A., *Guides* 407, 409 and 424 (5th ed. 2001).

⁵ OWCP’s hearing representative also noted that appellant did not dispute the zero percent rating for the right lower extremity. Additionally, he explained that Dr. Rogalsky’s 27 percent whole person impairment rating could not be utilized because FECA did not permit schedule awards for either the spine or whole person impairment.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁶ FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁷ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).⁸

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or in the implementing regulations.⁹ Neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole.¹⁰

ANALYSIS

The Board finds that the question of appellant's entitlement to a schedule award is not in posture for decision. The sixth edition of the A.M.A., *Guides* (2008) provides a specific methodology for rating spinal nerve extremity impairment.¹¹ It was designed for situations where a particular jurisdiction mandated ratings for extremities and precluded ratings for the spine.¹² The DMA based a four percent left leg rating on Table 16-12, "Peripheral Nerve Impairment-Lower Extremity Impairments," A.M.A., *Guides* 534-36 (6th ed. 2008), which is not the preferred method adopted by OWCP. Furthermore, he failed to explain how he arrived at his particular impairment rating under the A.M.A., *Guides*. The DMA merely noted that appellant's left lower extremity sciatic nerve symptoms warranted a four percent rating. OWCP's hearing representative acknowledged this deficiency, but nonetheless affirmed OWCP's decision.

Once OWCP undertakes development of the record it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹³ The Board finds that the DMA's report is not well reasoned and he did not apply the appropriate methodology for

⁶ For a total loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

⁷ 20 C.F.R. § 10.404 (2010).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁹ *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

¹⁰ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a); *see Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

¹² *Id.*

¹³ *Richard F. Williams*, 55 ECAB 343, 346 (2004).

rating appellant's lower extremity impairment due to the accepted lumbar condition. The medical evidence developed by OWCP does not adequately address the extent of any lower extremity impairment or maximum medical impairment the case will be remanded for further development. After OWCP has developed the case record to the extent it deems necessary, a *de novo* decision shall be issued regarding entitlement to a schedule award.

CONCLUSION

The Board finds that the case is not in posture for decision as the extent of permanent impairment to appellant's lower extremities.

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision.

Issued: August 3, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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