

FACTUAL HISTORY

Appellant, a 57-year-old vocational nurse, slipped and fell while walking to his car on February 14, 2007. He filed a claim for benefits on February 21, 2007, which the Office accepted for lumbar strain.

On December 17, 2007 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his left lower extremity.

In an August 24, 2009 report, received by the Office on March 4, 2008, Dr. James F. Hood, a Board-certified orthopedic surgeon, found that appellant had a three percent “stand-alone” impairment for pain pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). He stated that a magnetic resonance imaging (MRI) scan dated July 23, 2007 indicated degenerative disc changes in the lower lumbar area consisting of a disc protrusion and facet arthropathy, with no evidence of any canal stenosis or focal nerve root compression. Dr. Hood stated that appellant had no ratable abnormalities in his overall physical examination, with no evidence of any peripheral nerve abnormalities and normal range of motion in his hips, knees and ankles.

In a September 8, 2009 impairment evaluation, an Office medical adviser reviewed Dr. Hood’s report. He stated that the Office did not give impairment awards due to injury of the spine, nor is radiculopathy the basis for impairment. The Office medical adviser noted that if radiculopathy was present it would be permissible to use the appropriate peripheral nerve for impairment calculation; he stated, however, that this was not the case with appellant.

In a November 10, 2009 report, Dr. Hood found that appellant had a zero percent impairment rating.

In a December 7, 2009 report, the Office medical adviser found that appellant had a zero percent permanent impairment rating stemming from the accepted injury.

By decision dated January 8, 2010, the Office found that appellant had no ratable impairment causally related to an accepted condition and therefore was not entitled to a schedule award.

On January 15, 2010 appellant requested an oral hearing, which was held on April 5, 2010.

Appellant submitted progress notes from Dr. Glenn Whitten, a specialist in family practice, dated June 25 to 26, 2008 and April 23, 2010. Dr. Whitten indicated on June 25, 2008 that appellant had experienced chronic low back pain in February 2007 when he slipped on a patch of ice at work; he indicated that appellant did not have back pain prior to the fall. Dr. Whitten stated that since the work injury appellant had experienced chronic lower extremity pain which radiated down his left leg and was worsened by sneezing, with occasional numbness in his left foot.

Dr. Whitten further stated that appellant had an L4-5 disc bulge causing mild bilateral lateral recess and minimum left neural foramina narrowing, with canal stenosis. He stated that

his lumbar spine examination was mostly normal. Dr. Whitten opined that these findings were due to the temporal association of the onset of chronic back pain with his February 2007 fall. He also submitted Form CA-17 duty status reports dated May 14, 2008 and April 21, 2009 which diagnosed lumbar degenerative disc disease and outlined work restrictions. None of these reports, however, contained an impairment rating for the left lower extremity.

By decision dated May 13, 2010, an Office hearing representative affirmed the January 8, 2010 decision.

LEGAL PRECEDENT

The schedule award provision of the Act² and its implementing regulations³ 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴ 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.⁵

ANALYSIS

In the instant case, the Office accepted a condition of lumbar sprain. None of the reports of record, however, provided an impairment rating sufficient to entitle him to a schedule award. Dr. Hood stated in his August 24, 2009 report that appellant had a three percent “stand-alone” impairment for pain pursuant to the A.M.A., *Guides*. He stated that appellant had no ratable abnormalities in his overall physical examination, no evidence of any peripheral nerve abnormalities and normal range of motion in his hips, knees and ankles. An Office medical adviser reviewed Dr. Hood’s report on September 8, 2009 impairment evaluation and properly found that a schedule award is not payable under the Act for injury to the spine⁶ or based on whole person impairment.⁷ Appellant is, therefore, not entitled to impairment findings under Table 17-4. However, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.⁸

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404. Effective May 1, 2009, the Office began using the A.M.A., *Guides* (6th ed. 2009).

⁴ *Id.*

⁵ *Veronica Williams*, 56 ECAB 367, 370 (2005).

⁶ *Pamela J. Darling*, 49 ECAB 286 n.7 (1998).

⁷ *N.M.*, 58 ECAB 273 n.9 (2007).

⁸ *Thomas J. Engelhart*, 50 ECAB 319 n.8 (1999).

The accepted condition in this case is lumbar strain. The record also supports that appellant had preexisting lumbar degenerative disc disease, as shown by Dr. Hood's review of the July 23, 2007 MRI scan and by Dr. Whitten's reports. The Board notes that there is no specific provision for rating impairment based on strains or sprains in the A.M.A., *Guides*. However, this does not warrant the conclusion that such an award is precluded. The Board routinely reviews schedule award claims for which the accepted condition is sprain or strain and has recognized that a sprain/strain may result in a permanent impairment.⁹

However, appellant has to establish impairment to a scheduled member caused by the accepted condition before an impairment due to a preexisting condition can be assessed.¹⁰ The instant record is not sufficient to establish that appellant has an impairment caused by his accepted lumbar strain. Dr. Hood, appellant's treating physician, stated in his November 10, 2009 report that appellant had a zero percent impairment rating. The Office medical adviser determined in his December 7, 2009 report that appellant had no permanent impairment stemming from his accepted condition. Dr. Whitten stated that appellant had an L4-5 disc bulge causing mild bilateral lateral recess and minimum left neural foramina narrowing, with canal stenosis, reasonably attributable to the February 2007 work injury, and diagnosed lumbar degenerative disc disease in his May 2008 and April 2009 form reports. However, his reports did not contain probative, medical opinion establishing a permanent impairment of the lower extremity, attributable to the accepted condition.¹¹ Appellant has submitted no other medical evidence indicating that he has impairment to his left lower extremity. The Board will affirm the Office's May 13, 2010 decision.

CONCLUSION

The Board finds that appellant has not sustained any permanent impairment to a scheduled member of his body causally related to his accepted lumbar condition, thereby entitling him to a schedule award under 5 U.S.C. § 8107.

⁹ *C.H.*, Docket No. 08-2246 (issued May 15, 2009).

¹⁰ See generally *Thomas P. Lavin*, 57 ECAB 353 (2006).

¹¹ The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which 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. See *Peter C. Belkind*, 56 ECAB 580, 585 (2005).

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 10, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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