United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 11-828**
	)	**Issued: November 9, 2011**
U.S. POSTAL SERVICE, POST OFFICE, DeForest, WI, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 15, 2011 appellant filed a timely appeal from the September 21, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which awarded schedule compensation. 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 more than a 31 percent impairment of his right leg for which he received a schedule award.

FACTUAL HISTORY

On December 12, 2008 appellant, a 71-year-old rural carrier, fractured his right hip in the performance of duty when he slipped and fell on a patch of ice while carrying a tub of mail.

[1] 5 U.S.C. § 8101 *et seq.*

OWCP accepted his claim for right acetebular fraction with open reduction and internal fixation. He claimed a schedule award based on permanent impairment.

Dr. Gerald J. Lang, a Board-certified orthopedic surgeon and associate professor, evaluated appellant's physical impairment. He noted intermittent daily pain in the right hip/groin, minimal loss of muscle strength, bone-on-bone arthritis and occasional use of a cane.[2] Dr. Lang also noted loss of hip motion: forward flexion was 80 degrees, extension was zero degrees, abduction was 20 degrees, adduction was 10 degrees, internal rotation was zero degrees and external rotation was 10 degrees. He did not offer a percentage impairment rating in this report.

An OWCP medical adviser reviewed Dr. Lang's findings and determined that appellant had a 31 percent impairment of his right leg due to loss of hip motion. Using Table 16-24, page 549 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009), he found that mild loss of flexion, abduction and adduction each caused 5 percent impairments, while moderate losses for internal and external rotation each caused 10 percent impairment.[3]

On September 21, 2010 OWCP issued a schedule award for a 31 percent impairment of appellant's right lower extremity, which amounted to 89.28 weeks of compensation.

On appeal, appellant disagrees with percentage impairment awarded. He noted that Dr. Lang reported a 50 percent loss of use of the right lower extremity. Appellant argues that OWCP did not take into consideration the extent of pain that he suffered each day. He also argues that the number of weeks of compensation OWCP awarded should be increased from 89.28 to 150.

LEGAL PRECEDENT

Section 8107 of FECA[4] authorizes the payment of 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[5]

[2] Previous x-rays revealed stable alignment of the right-sided acetebular fracture with no development of post-traumatic degenerative joint disease.

[3] Rather than add the individual impairments together, the medical adviser combined them under the Combined Values Chart on page 604 of the A.M.A., *Guides*.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

ANALYSIS

Diagnosis-based impairment is the primary method of evaluation for the lower extremity.[6] The first step in determining an impairment rating is to choose the diagnosis that is most applicable for the region being assessed.[7] Table 16-4, page 512 of the A.M.A., *Guides* provides diagnoses for the hip region. Fractures about the hip joint, including acetebular fractures, are found on page 514. Default impairment values for this diagnosis range from 7 to 37 percent, depending on the measured displacement of the articular surface. The default impairment value for an infected fracture is 50 percent. These default values can be adjusted slightly up or down based on such nonkey factors as functional history and findings on physical examination.[8]

OWCP did not award appellant compensation for a diagnosis-based impairment. Instead, it awarded compensation based on loss of motion. Section 16.7 of the A.M.A., *Guides*, page 543, explains, however, that diagnosis-based impairment is the method of choice for calculating impairment, and that range of motion is used principally as a factor in adjusting that calculation. Some of the diagnosis-based impairment grids refer to the range of motion when that is the most appropriate mechanism for grading the impairment, but Table 16-4, The Hip Regional Grid, does not indicate that range of motion may be used as an alternative method.[9] Other circumstances in which the range of motion section may be used do not apply in this case.[10] The sixth edition of the A.M.A., *Guides* does not support rating appellant's impairment under the range of motion section. Table 16-4, page 514, provides a relevant diagnosis for a diagnosis-based rating, which is the primary method of evaluation and the method of choice for the lower extremity. The Board, therefore, will set aside appellant's schedule award and remand the case for a proper application of the A.M.A., *Guides* and an appropriate final decision on appellant's claim for a schedule award.[11]

Appellant argues on appeal that Dr. Lang reported a 50 percent loss of use of his right lower extremity. He reported a 50 percent decrease in motion of the hip, not a 50 percent impairment of the right lower extremity. The specific ranges of hip motion he recorded do not reflect a 50 percent impairment of the lower extremity.

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[6] A.M.A., *Guides* 497.

[7] *Id*. at 499.

[8] *Id*. at 515.

[9] Upper extremity grids, by contrast, place asterisks by the relevant diagnoses to indicate that impairment may be assessed alternatively using range of motion. No such asterisk appears in Table 16-4 for the diagnosis of fracture about the hip joint.

[10] Range of motion may be used when no other diagnosis-based section is applicable, when there is an amputation impairment or, in very rare cases, when severe injuries having significant functional loss result in passive range of motion losses qualifying for severe or very severe classification. A.M.A., *Guides* 543.

[11] *See G.N.*, Docket No. 10-850 (issued November 12, 2010) (where it appeared OWCP's medical adviser did not properly apply the A.M.A., *Guides*, the Board set aside the schedule award and remanded the case for a proper application).

Appellant also argues that OWCP did not take into consideration the extent of pain that he suffered each day. The rating he received for loss of motion, or will receive based on his diagnosis, takes pain into consideration. Appellant's award will primarily reflect objective factors, but subjective experiences regarding his condition, such as pain, do play a role in modifying the relevant default impairment. If a patient presents with a painful condition and cannot be rated according to the principles outlined in other chapters, the A.M.A., *Guides* provides a separate pain-related impairment, but in no circumstance should this pain-related impairment be considered as an add-on to the impairment determined in other chapters.[12] Because appellant may and should be rated for his diagnosed acetebular fracture, a rating that can be modified by a functional assessment reflecting pain, he may not receive an additional award for pain-related impairment.

Finally, appellant argues that he should receive 150 weeks of compensation for his impairment. The number of weeks of compensation he receives depends on his impairment rating. The maximum compensation for 100 percent loss of a leg is 288 weeks of compensation, such as when the leg is amputated at the hip.[13] Partial losses are compensated proportionately.[14] A 31 percent impairment, therefore, warrants 89.28 weeks of compensation (0.31 x 288), but as noted a proper impairment rating for appellant's acetebular fracture has not yet been determined.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

[12] A.M.A., *Guides* 39.

[13] 5 U.S.C. § 8107(c)(2).

[14] *Id*. at § 8107(c)(19).

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: November 9, 2011
Washington, DC

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

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

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