

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

D.M., Appellant

and

**DEPARTMENT OF THE NAVY, KINGS BAY
SUBMARINE BASE, Kings Bay, GA, Employer**

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**Docket No. 11-775
Issued: October 11, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 8, 2011 appellant, through his attorney, filed a timely appeal from an October 4, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for an increased 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 more than a four percent permanent impairment of the left leg for which he received a schedule award.

FACTUAL HISTORY

This case has previously been before the Board. On January 28, 2010 the Board affirmed an April 13, 2009 nonmerit decision denying appellant's request to reopen the case for further

¹ 5 U.S.C. § 8101 *et seq.*

merit review under 5 U.S.C. § 8128.² The Board found that he had not submitted sufficient evidence to warrant reopening his case for further merit review of OWCP's May 30, 2007 decision granting him a schedule award for four percent permanent impairment of the left lower extremity. The facts and circumstances of the case as set forth in the prior decision are hereby incorporated by reference.

In an impairment evaluation dated March 14, 2010, Dr. William N. Grant, a Board-certified internist, diagnosed a permanent aggravation of spondylolisthesis. On examination he measured range of motion of the lumbar spine and discussed appellant's complaints of left leg pain and spasms and numbness in the left foot. Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*), Dr. Grant identified a class 1 impairment due to spondylolisthesis using Table 17-4 on page 570, which is applicable to determining impairments of the lumbar spine. He applied grade modifiers and concluded that appellant had nine percent impairment of the lumbar spine.

On March 19, 2010 appellant, through counsel, requested an increased schedule award. OWCP's medical adviser reviewed Dr. Grant's report on March 25, 2010 and noted that FECA did not provide an award for an impairment to the spine. He concluded that the medical evidence did not establish an additional lower extremity impairment.

By decision dated April 21, 2010, OWCP denied appellant's claim for an increased schedule award. On April 27, 2010 counsel requested a telephone hearing.

In a report dated May 18, 2010, Dr. Grant noted that appellant experienced pain and loss of sensation in the left leg and had reduced range of motion of the spine. He found that he had a class 2 impairment due to a moderate motor deficit according to Table 16-12 on page 535. Dr. Grant applied a grade modifier of two for Functional History (GMFH) and Physical Examination (GMPE), to find no net adjustment from the default value for a class 2 impairment. He concluded that appellant had 23 percent lower extremity impairment.

At the hearing, held on August 2, 2010, counsel argued that OWCP's medical adviser should review Dr. Grant's May 18, 2010 finding of a 23 percent lower extremity impairment.

By decision dated October 4, 2010, OWCP's hearing representative affirmed the April 21, 2010 decision. He found that Dr. Grant provided no measurements or explanation in support of his conclusion.

² OWCP accepted that appellant sustained a permanent aggravation of spondylolisthesis at L5-S1 due to factors of his federal employment. Appellant underwent a lumbar spinal fusion in April 2005. By decision dated May 30, 2007, OWCP granted him a schedule award for four percent permanent impairment of the left lower extremity.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing federal regulations⁴ 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, FECA 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, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

The sixth edition requires identifying the impairment class for the Diagnosed Condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and Clinical Studies (GMCS).⁷ The net adjustment formula is GMFH-CDX + GMPE-CDX + GMCS-CDX.

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from his physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent descriptions of the impairment. 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.⁸

ANALYSIS

OWCP accepted that appellant sustained a permanent aggravation of lumbar spondylolisthesis at L5-S1. In April 2005 appellant underwent a lumbar spinal fusion. By decision dated May 30, 2007, OWCP granted him a schedule award for four percent permanent impairment of the left lower extremity under the fifth edition of the A.M.A., *Guides*.

On March 19, 2010 appellant requested an increased schedule award. He submitted a March 14, 2010 impairment evaluation from Dr. Grant, who found that he had nine percent permanent impairment of the lumbar spine. OWCP's medical adviser reviewed Dr. Grant's impairment evaluation and properly found that FECA did not provide a schedule award for the back. Thus, Dr. Grant's March 14, 2010 impairment evaluation was insufficient to support

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁷ A.M.A., *Guides* 494-531.

⁸ *Peter C. Belkind*, 56 ECAB 580 (2005); *Vanessa Young*, 55 ECAB 575 (2004).

appellant's schedule award claim as neither FECA nor the regulations authorize a schedule award for a permanent impairment of the spine, neck or back.⁹

On May 18, 2010 Dr. Grant discussed appellant's complaints of left leg pain and decreased sensation and reduced spinal motion. He identified the diagnosis as a class 2 moderate motor deficit of a peripheral nerve according to Table 16-12 of the sixth edition of the A.M.A., *Guides*. Dr. Grant did not specifically identify the nerve used. He further found a grade 2 modifier for GMFH and GMPE, which he determined yielded a net adjustment of zero in the default value of 23 percent. Dr. Grant did not explain how appellant's GMFH or the findings on GMPE supported the grade modifiers. Further, it does not appear that a moderate motor deficit of a peripheral nerve yields 23 percent impairment as a default value under Table 16-12. OWCP 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 Dr. Grant did not provide detailed findings on physical examination, identify the impaired peripheral nerve or explain how he chose the grade modifiers; consequently, his opinion lacks the clinical findings necessary to determine the extent of permanent impairment of the lower extremities.

Appellant has the burden of proof to establish that he is entitled to schedule award compensation.¹² As he has not submitted medical evidence sufficient to show that he has an increased permanent impairment of the left lower extremity, he has not established his claim for an increased schedule award.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has no more than four percent permanent impairment of the left lower extremity for which he received a schedule award.

⁹ 5 U.S.C. § 8101(19); *Timothy J. McGuire*, 34 ECAB 189 (1982).

¹⁰ See *Peter C. Belkind*, *supra* note 9; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c)(1) (August 2002).

¹¹ See *D.N.*, 59 ECAB 576 (2008); *Robert B. Rozelle*, 44 ECAB 615 (1993).

¹² See *D.H.*, 58 ECAB 358 (2007); *Annette M. Dent*, 44 ECAB 403 (1993).

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2010 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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