United States Department of Labor
Employees' Compensation Appeals Board

R.V., Appellant	)	
and	)	**Docket No. 11-1999**
	)	**Issued: April 12, 2012**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Shreveport, LA, Employer	)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On August 29, 2011 appellant timely appealed the August 5, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which granted a schedule award.[1] The Board docketed the appeal as No. 11-1999.

This case was previously before the Board.[2] Appellant, a 56-year-old mail handler, has an accepted claim for lumbar strain and intervertebral disc disorder with myelopathy, which arose on March 30, 2006. The last time the case was on appeal, OWCP denied his claim for a schedule award. By order dated June 28, 2011, the Board remanded the case, in part, because the district medical adviser (DMA) had not explained why the July 16, 2009 examination results from Dr. Austin W. Gleason, III, ostensibly did not support a finding of lower extremity impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2008). Dr. Gleason, a Board-certified orthopedic surgeon, diagnosed degenerative disc disease at L2-3, L3-4, and L4-5 with mild spinal stenosis and lateral

[1] Pursuant to the Federal Employees' Compensation Act (FECA), 5 U.S.C. §§ 8101-8193, and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[2] Docket No. 10-1791 (issued June 28, 2011).

recess stenosis. He found nine percent impairment of the "total body" based on multilevel degenerative discs with stenosis.[3] In a report dated October 5, 2009, the DMA summarized Dr. Gleason's findings and noted, without explanation, that "there [was] no job-related impairment of the lower extremities" under the A.M.A., *Guides* (6th ed. 2008). In a supplemental report, also dated July 16, 2009, Dr. Gleason found six percent impairment of the right lower extremity (RLE) due to peripheral vascular disease. OWCP, without referring the supplemental report to the DMA, dismissed Dr. Gleason's six percent RLE rating on the basis that the noted impairment was not proved to be causally related to appellant's accepted lumbar condition.

In setting aside OWCP's May 14, 2010 decision, the Board found that the DMA's October 5, 2009 report lacked sufficient rationale, and therefore, his analysis was incomplete. The Board also noted that OWCP should have forwarded Dr. Gleason's supplemental report to the DMA for review. Lastly, the Board advised that not all impairments to a scheduled member need be employment related, and under certain circumstances, previous impairments may be included in calculating the percentage of loss. The Board noted that the medical evidence suggested that appellant's peripheral vascular disease predated his March 30, 2006 employment injury. Because OWCP had not properly developed the record with respect to his schedule award claim, the Board remanded the case for further development, followed by the issuance of a *de novo* decision regarding entitlement to a schedule award.[4]

On remand, the DMA, Dr. H. Mobley, reiterated, verbatim, his October 5, 2009 report. He also provided a July 19, 2011 addendum in which he concurred with Dr. Gleason's finding of six percent RLE impairment for peripheral vascular disease.

By decision dated August 5, 2011, OWCP granted a schedule award for six percent impairment of the right lower extremity.[5] The award covered a period of 17.28 weeks from July 16 to November 19, 2009.

Once again, the Board finds that the case is not in posture for decision because the DMA's analysis is incomplete. Dr. Mobley has yet to provide any rationale explaining why appellant's accepted lumbar condition presumably does not support entitlement to a schedule award for lower extremity impairment. The A.M.A., *Guides* (6th ed. 2008) provides a specific methodology for rating spinal nerve extremity impairment.[6] It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine.[7] The impairment is premised on evidence of radiculopathy affecting the upper

[3] Neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole. 5 U.S.C. § 8107(c)(2006); 20 C.F.R. § 10.404(a)(2011); *see Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000). However, a schedule award is permissible where the employment-related back condition affects the upper and/or lower extremities. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a(3) (January 2010).

[4] The Board's June 28, 2011 order is incorporated herein by reference.

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

[6] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4.

[7] *Id.*

and/or lower extremities.[8] The DMA's October 5, 2009 and July 19, 2011 reports did not identify the applicable criteria for rating spinal nerve extremity impairment, nor did Dr. Mobely explain how Dr. Gleason's July 16, 2009 examination findings presumably failed to support a lumbar-related lower extremity impairment under the sixth edition of the A.M.A., *Guides* (2008).

As noted in the Board's prior order dated June 28, 2011, 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.[9] As the DMA's October 5, 2009 and July 19, 2011 reports are incomplete, the case will be remanded to OWCP for further development. After OWCP has developed the case record to the extent it deems necessary, a *de novo* decision shall be issued.

IT IS HEREBY ORDERED THAT the August 5, 2011 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this order.

Issued: April 12, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[8] *Id*.

[9] *Richard F. Williams*, 55 ECAB 343, 346 (2004).