United States Department of Labor
Employees' Compensation Appeals Board

T.H., Appellant	)	
and	)	**Docket No. 12-645**
	)	**Issued: August 7, 2012**
DEPARTMENT OF THE ARMY, ARMY NATIONAL GUARD, North Little Rock, AR, 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
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 30, 2012 appellant filed a timely appeal from the January 12, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award. Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 met his burden of proof to establish that he has more than 10 percent permanent impairment of his left leg, for which he received a schedule award.

FACTUAL HISTORY

OWCP initially accepted that on March 30, 2005 appellant, then a 37-year-old painter, sustained a lumbar sprain/strain due to lifting a sand bag off a pallet at work. OWCP later found

[1] 5 U.S.C. §§ 8101-8193.

that appellant also sustained herniated discs at L4-5 and L5-S1 on March 30, 2005 and it authorized the performance on December 9, 2005 of lumbar laminectomy and fusion surgery at those levels.[2] Appellant received compensation from OWCP for periods of disability.

In a February 16, 2010 report, Dr. Patricia Knott, a Board-certified physical medicine and rehabilitation physician serving as an OWCP referral physician, determined that appellant had a 10 percent permanent impairment of his left leg under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2009). Dr. Knott applied the standards of Table 16-12 (Peripheral Nerve Impairment (Lower Extremity Injury)), beginning on page 534, to find that appellant had three percent impairment due to sensory loss and seven percent impairment due to motor loss. These values were combined to equal a total impairment of appellant's left leg of 10 percent. In a March 26, 2010 report, Dr. Daniel D. Zimmerman, a Board-certified internist who served as an OWCP medical adviser, indicated that he agreed with the impairment rating of Dr. Knott.

In a March 30, 2010 award of compensation, OWCP granted appellant a schedule award for 10 percent permanent impairment of his left leg.

After developing the medical evidence, OWCP updated appellant's accepted conditions on November 16, 2010 to include disorder of the left side of his sacroiliac joint.

Appellant claimed entitlement to a higher level of schedule award compensation for his left leg impairment. In support of his claim, he submitted a January 24, 2011 note in which Dr. Kenneth M. Rosenzweig, an attending Board-certified orthopedic surgeon, provided an impairment rating. Dr. Rosenzweig reported that under the sixth edition of the A.M.A., *Guides*, appellant had 11 percent impairment of the back and 10 percent impairment of the leg.

In a February 27, 2011 report, Dr. Zimmerman evaluated the January 24, 2011 report of Dr. Rosenzweig. He indicated that Dr. Rosenzweig did not specify which tables he used, but it was apparent that he was referencing the Lumbar Spine Regional Grid on pages 570 through 574 of the sixth edition. Dr. Zimmerman noted that Dr. Rosenzweig indicated that the rating was a class 3 rating without citing how he chose to use what would have to be a "D" value of 21 percent (for the body as a whole), a value which would be considered to be an 11 percent rating for the back or a 10 percent rating for the leg. Dr. Zimmerman indicated that Dr. Rosenzweig did not explain why this method of rating would be correct and concluded that there was no medical evidence in the file which would cause the 10 percent schedule award for the left leg to be modified.

In a March 4, 2011 decision, OWCP denied appellant's claim that he has more than a 10 percent permanent impairment of his left leg, for which he received a schedule award. It found that Dr. Zimmerman properly determined that Dr. Rosenzweig's impairment calculation was not well rationalized.

Appellant submitted two different versions of the May 6, 2011 treatment note from Dr. Rosenzweig. The May 6, 2011 note received by OWCP on May 31, 2011 indicated that

[2] OWCP later accepted that appellant sustained complications due to the orthopedic device used in this surgery.

appellant was seen in follow up after radiofrequency denervation of the left sacroiliac joint. Under the portion of the note entitled, "Plan/Recommendation," he stated that using Table 17-3 on page 559 of the sixth edition of the A.M.A., *Guides*,[3] appellant was a candidate for a six percent impairment in addition to his previous report, as a result of his sacroiliac dysfunction. Under the portion of the note entitled, "Plan/Recommendation," the May 6, 2011 treatment note received on August 4, 2011 indicated the use of the fourth edition of the A.M.A., *Guides* and blank spaces were left in identifying the tables and pages used, as well as the percentage of impairment.

The case file was forwarded to Dr. Zimmerman for his review of the new medical evidence. In an August 22, 2011 report, Dr. Zimmerman concluded that the two May 6, 2011 notes of Dr. Rosenzweig were of little value regarding appellant's left leg impairment. Dr. Rosenzweig did not include a thorough history of appellant's medical condition, including physical examination findings, and therefore, the notes could not be utilized in determining an impairment rating for radicular residuals due to a lumbar spine condition. Dr. Zimmerman noted that a whole person rating would not represent an impairment rating for the lumbar spine based on radicular residuals.

In an August 26, 2011 decision, OWCP denied modification of its March 4, 2011 decision.

Appellant submitted a November 28, 2011 report in which Dr. Rosenzweig stated that, after back surgery, he developed increasing back, hip, and leg pain due to sacroiliac dysfunction. Dr. Rosenzweig stated that appellant had undergone extensive treatment for sacroiliac dysfunction as a source of leg pain including multiple blocks and eventually a lateral branch rhizotomy denervating the four sacral branches to the sacroiliac joint. He noted that appellant asked that he provide this information in support of his schedule award claim. Dr. Rosenzweig stated that, under Table 17-3 on page 559 of the sixth edition of the A.M.A., *Guides*, appellant had a class 2 moderate problem of the pelvis which was equal to a six percent whole person impairment. He stated, "For clarification, if needed, a six percent whole person impairment as a result of a sacroiliac dysfunction corresponds to a 14 percent lower extremity impairment." Dr. Rosenzweig indicated that the objective findings with respect to the sacroiliac complaint included plain radiographs and a magnetic resonance imaging scan test of the pelvis performed on October 6, 2010. He stated that his opinions were based on objective findings, subjective complaints and response to treatment.

In a December 26, 2011 report, Dr. Zimmerman, again serving as an OWCP medical adviser, stated that he had reviewed the case file, including the November 28, 2011 report of Dr. Rosenzweig. He noted that the November 28, 2011 report did not contain any examination findings regarding the lumbosacral spine and the lower extremities. Dr. Zimmerman indicated that all ratings offered as whole person ratings can be converted to ratings of the lower extremities using Table 16-10 on page 530 of the sixth edition of the A.M.A., *Guides*. He indicated, however, that the fact that the conversion table is in the A.M.A., *Guides* does not allow the whole person rating to automatically represent a lower extremity rating. Dr. Zimmerman

[3] The table appearing on page 559 actually is Table 17-1 rather than Table 17-3.

stated that for a lower extremity rating to be considered for schedule award purposes due to the accepted condition at the lumbar level, the rating must be based on examination findings and a history consistent with radicular residuals of the lumbar spine condition and the lumbar operative procedures diagnosed. He stated that the rating recommended in the November 28, 2011 report of Dr. Rosenzweig did not require a revision of the schedule award appellant received for 10 percent left leg impairment.

In a January 12, 2012 decision, OWCP denied modification of its August 26, 2011 decision, noting that the November 28, 2011 report of Dr. Rosenzweig was not sufficiently well rationalized to establish that appellant was entitled to additional schedule award compensation.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing regulations[5] 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 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.[6] The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.[7]

ANALYSIS

OWCP accepted that, due to a March 30, 2005 lifting incident at work, appellant sustained a lumbar sprain/strain, herniated discs at L4-5 and L5-S1, complications due to the orthopedic device used in his authorized back surgery and disorder of the left side of his sacroiliac joint. In a March 30, 2010 award of compensation, OWCP granted appellant a schedule award for 10 percent permanent impairment of his left leg. Appellant claimed entitlement to a higher level of schedule award compensation.

The Board finds that appellant did not meet his burden of proof to establish that he has more than 10 percent permanent impairment of his left leg, for which he received a schedule award.

In support of his claim for increased schedule award compensation, appellant submitted January 27, May 6 and November 28, 2011 reports of Dr. Rosenzweig, an attending Board-certified orthopedic surgeon. In these reports, Dr. Rosenzweig referenced various tables in

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

[6] *Id*.

[7] FECA Bulletin No. 09-03 (issued March 15, 2009).

Chapter 17 (The Spine and Pelvis) of the sixth edition of the A.M.A., *Guides*.[8] He variously provided impairment ratings relating to the whole person, back and left leg.[9] In his November 28, 2011 report, Dr. Rosenzweig indicated that appellant had 14 percent lower extremity impairment.

Each of these reports was evaluated by Dr. Zimmerman, a Board-certified internist who served as an OWCP medical adviser, and the Board notes that Dr. Zimmerman properly determined, in reports dated February 27, August 22 and December 26, 2011, that Dr. Rosenzweig's impairment ratings are of little probative value regarding the extent of appellant's leg impairment. Dr. Zimmerman correctly pointed out that Dr. Rosenzweig did not adequately explain why he chose to apply the various tables found in Chapter 17, which relate to the spine and the pelvis, to evaluate appellant's leg impairment, nor did Dr. Rosenzweig explain the manner in which these tables were applied. He also noted that Dr. Rosenzweig did not provide adequate findings on physical examination and diagnostic to explain how work-related injury to appellant's back caused impairment in his left leg.

For these reasons, appellant did not meet his burden of proof to establish that he has more than a 10 percent permanent impairment of his left leg, for which he received a schedule award.[10] He 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 did not meet his burden of proof to establish that he has more than a 10 percent permanent impairment of his left leg, for which he received a schedule award.

[8] In one of the two notes dated May 6, 2011, Dr. Rosenzweig referenced the fourth edition of the A.M.A., *Guides*, but the sixth edition is the relevant edition for evaluating appellant's impairment. *See supra* note 7.

[9] *See J.Q.*, 59 ECAB 366 (2008) (neither FECA nor the regulations provide for a schedule award for loss of use of the back or to the body as a whole).

[10] On appeal, appellant asserted that his work-related sacroiliac condition was not addressed by physicians until November 2010. He would have the burden to submit a rationalized medical report explaining how his work-related conditions contributed to his leg impairment, but he did not submit sufficient medical evidence to show that he has more than a 10 percent impairment of his left leg.

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board