United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 12-819**
	)	**Issued: August 17, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Huntington, WV, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 5, 2012 appellant filed a timely appeal from an October 24, 2011 schedule award decision of the Office of Workers' Compensation Programs (OWCP). 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 the schedule award decision.

ISSUE

The issue is whether appellant met his burden of proof to establish more than 14 percent impairment of the left leg for which he received a schedule award.

On appeal, appellant contends that he is entitled to separate awards for his foot and leg conditions is entitled to a greater award.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On April 21, 2009 appellant, then a 45-year-old clerk, filed a traumatic injury claim, alleging that he injured his back that day when sweeping mail. On June 3, 2009 OWCP accepted a lumbar sprain. The claim was also accepted for displacement of intervertebral lumbar disc without myelopathy. On June 15, 2009 Dr. David L. Weinsweig, a Board-certified neurosurgeon, performed a lumbar microdiscectomy at L4-5. Appellant returned to modified duty on April 19, 2010.

On November 10, 2010 appellant filed a schedule award claim. By letter dated November 15, 2010, OWCP informed him of the evidence needed to submit a report from a physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).[2] Appellant was afforded 30 days to submit the requested information.

In an October 26, 2010 report, Dr. Natavoot Chongswatdi, Board-certified in family medicine, noted that appellant had multiple, complex medical problems. He provided physical examination findings and diagnosed a herniated disc at L4-5. Dr. Chongswatdi advised that appellant had reached maximum medical improvement following back surgery and needed an impairment evaluation. In a December 9, 2010 letter, he reiterated that appellant had reached maximum medical improvement and had residuals of back pain, left lower extremity weakness, radiculopathy and numbness and that he still needed medication to function at work.

By decision dated January 28, 2011, OWCP denied appellant's schedule award claim as the medical evidence submitted did not provide any impairment rating.

On February 24, 2011 appellant requested reconsideration and submitted a February 24, 2011 report from Dr. Robert W. Lowe, a Board-certified orthopedic surgeon, who noted the history of injury and medical treatment and appellant's complaints of low back pain with weakness and numbness in the left lower extremity. Dr. Lowe reviewed medical records, including magnetic resonance imaging (MRI) scan studies. He provided physical examination findings that included diminished strength and sensation on the left. Dr. Scott diagnosed status post herniated nucleus pulposus, operated, with reasonable result. He advised that in accordance with the sixth edition of the A.M.A., *Guides*, under Table 17-7, appellant had a physical examination grade modifier of 1, based on his sensory deficit and motor strength, and a modifier of 2 for clinical studies, based on MRI scan findings, which placed him in class 2 of Table 17-7, Lumbar Regional Grid, with a default value of 12 percent whole person impairment. A pain disability questionnaire was scored at 88.[3]

On April 29, 2011 Dr. Arnold T. Berman, an OWCP medical adviser who is Board-certified in orthopedic surgery, reviewed the medical record, including Dr. Lowe's February 24, 2011 report. He utilized Table 2, Spinal Nerve Impairment, Lower Extremity found in *The*

[2] A.M.A., *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008).

[3] Appellant also submitted a January 4, 2011 report in which Dr. Chongswatdi reiterated his previous findings and conclusions. Dr. Chongswatdi did not provide an impairment rating.

Guides Newsletter of July/August 2009. In rating the L5 injury, appellant had a class 1 impairment due to a 13 percent motor impairment and a one percent sensory impairment, for a total left leg impairment of 14 percent, with February 24, 2011 the date of maximum medical improvement.

In a July 22, 2011 decision, OWCP granted a schedule award for a 14 percent left leg impairment, based on the opinion of Dr. Berman. It ran for a total of 40.32 weeks from April 19, 2010 to January 26, 2011.

On September 2, 2011 appellant requested reconsideration. He asserted that he was entitled to separate awards for his foot and his leg since both were affected members. In reports dated August 9 and 11, 2011, Dr. Chongswatdi described appellant's condition and diagnosed hip joint pain, lower back sprain, herniated disc at L4-5 and lumbar radiculopathy. He advised that appellant should receive an award that included his foot.

On September 26, 2011 OWCP asked its medical adviser to review the medical record and explain whether he considered left foot findings when calculating appellant's left lower extremity impairment. In an October 17, 2011 report, Dr. Berman advised that Dr. Lowe's impairment rating could not be accepted because he did not correctly rate impairment, as he incorrectly utilized the lumbar grid rather than evaluating the lower extremity. The medical adviser further advised that he took appellant's left foot findings into account when rating the spinal nerve involvement to the lower extremity on April 29, 2011, in accordance with the July/August 2009 *The Guides Newsletter*.

In a merit decision dated October 24, 2011, OWCP found that appellant did not establish greater than 14 percent permanent impairment.

LEGAL PRECEDENT

The schedule award provision of FECA,[4] and its implementing federal 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[6] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.[7] For decisions issued after May 1, 2009, the sixth edition is to be used.[8]

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id.* at § 10.404(a).

[7] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

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

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under FECA for injury to the spine.[9] In 1960, amendments to FECA modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of FECA include the extremities, 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.[10]

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. The A.M.A., *Guides* for decades has offered an alternative approach to rating spinal nerve impairments.[11] OWCP has adopted this approach for rating impairment of the upper or lower extremities caused by a spinal injury, as provided in section 3.700 of its procedures which memorializes proposed tables outlined in the July/August 2009 *The Guides Newsletter*.[12]

In addressing lower extremity impairments, due to peripheral or spinal nerve root involvement, the sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH) and if electrodiagnostic testing were done, Clinical Studies (GMCS).[13] The net adjustment formula is (GMFH - CDX) + (GMCS - CDX).[14]

ANALYSIS

The Board finds that appellant has 14 percent impairment of the left leg. OWCP accepted that he sustained a lumbar sprain and displacement of intervertebral lumbar disc without myelopathy for which he underwent surgery. The Board finds that the weight of the medical evidence rests with the opinion of OWCP's medical adviser, the only impairment evaluation of record that comports with the sixth edition of the A.M.A., *Guides*.

Dr. Lowe rated appellant's lower extremity impairment using the sixth edition of the A.M.A., *Guides*, but he used Chapter 17, "The Spine and Pelvis." As noted, lower extremity impairments are to be rated as provided in Exhibit 4 of section 3.700 of OWCP's procedures. This identifies proposed Table 2 to be used in rating lower extremity impairments caused by

[9] *Pamela J. Darling*, 49 ECAB 286 (1998).

[10] *Thomas J. Engelhart*, 50 ECAB 319 (1999).

[11] *Rozella L. Skinner*, 37 ECAB 398 (1986).

[12] FECA Transmittal No. 10-04 (issued January 9, 2010); Federal (FECA) Procedure Manual, *supra* note 7.

[13] A.M.A., *Guides*, *supra* note 2 at 533.

[14] *Id*. at 521.

spinal nerve injury.[15] Dr. Lowe provided a whole person spinal impairment while FECA does not authorize schedule awards for permanent impairment of the whole person or the spine.[16]

Dr. Chongswatdi did not provide an impairment rating in his reports but stated that appellant should receive a separate award for his foot.

In an April 29, 2011 report, Dr. Berman reviewed the medical record and identified the L5 nerve root. He found that maximum medical improvement was reached on February 24, 2011. The medical adviser utilized Table 2 and found a class 1 impairment, with a 13 percent motor impairment and a 1 percent sensory impairment, or a total left lower extremity impairment of 14 percent. On October 17, 2011 Dr. Berman advised that, upon review of additional medical evidence, he found no change in the recommended impairment rating.

The Board finds that OWCP's medical adviser properly reviewed the medical record and evaluated appellant's left lower extremity impairment in accordance with OWCP procedures found at Exhibit 4 of section 3.700. There is no medical evidence in conformance with the A.M.A., *Guides* showing a greater impairment.

Appellant argued on appeal that he is entitled to separate schedule awards for the leg and the foot. Where the residuals of an injury to a member of the body specified in the schedule extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, of a hand into the arm or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.[17] In this case, the largest member is the leg. Dr. Berman properly provided an impairment rating.

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 did not establish that he has more than a 14 percent impairment of the left lower extremity.

[15] *Supra* note 7.

[16] *N.D.*, 59 ECAB 344 (2008).

[17] *George A. Boyd*, 56 ECAB 707 (2005).

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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