

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

J.G., Appellant)
and) Docket No. 13-223
U.S. POSTAL SERVICE, POST OFFICE,) Issued: April 15, 2013
Baltimore, MD, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 7, 2012 appellant filed a timely appeal from a July 16, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has more than five percent impairment of his right leg and any impairment of his left leg.

FACTUAL HISTORY

On June 20, 2009 appellant, then a 55-year-old letter carrier, sustained a back injury when he slipped and fell on a customer's steps. He stopped work on June 20, 2009 and returned

¹ 5 U.S.C. § 8101 *et seq.*

on August 24, 2009. OWCP accepted the claim for a lumbar strain and lumbar radiculitis. Appellant received wage-loss benefits.

Appellant filed claims for a schedule award on July 10, 2010 and August 10, 2011. By decision dated December 2, 2011, OWCP issued a schedule award for five percent impairment of the right leg and zero percent (no) impairment of the left leg.

On January 13, 2012 appellant requested reconsideration. In a December 23, 2011 report, Dr. William J. Launder, a Board-certified internist, stated that appellant was at maximum medical improvement. Based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), he opined that appellant had 12 percent impairment of his lumbar spine. Under Table 17-4, page 571, Dr. Launder opined that appellant had a class 2 impairment without significant modifying factors.

By decision dated February 28, 2012, OWCP denied appellant's claim for an additional schedule award.

On April 27, 2012 appellant requested reconsideration. In an April 6, 2012 report, Dr. Launder opined that, under the sixth edition of the A.M.A., *Guides*, appellant had 12 percent impairment of his low back with a class 2 spinal impairment under Table 17-4, page 571. He stated that appellant's radiculopathy included a positive straight leg raising test with grade modifier of 2. However, there was no motor, reflex or nerve deficit.

In a June 15, 2012 report, an OWCP medical adviser reviewed the medical evidence of record and found there was no greater impairment into either lower extremity. He opined that the date of maximum medical improvement was April 6, 2012, the date Dr. Launder examined appellant. The medical adviser stated:

"[T]he claimant has diagnostic evidence of disc desiccation and facet disease at L4-L5. There is minimal spondylolisthesis at that level. [The claimant] has marrow edema in the pelicles of L4 and L5 bilaterally. At [maximum medical improvement], Dr. Launder found the claimant to have no sensory or motor deficits in either lower extremity. This places the claimant into [c]lass 0 of the lower extremity spinal nerve under [T]able 2, page 6 of *The AMA Guides Newsletter* July/August 2009. This is equal to zero percent [lower extremity impairment]. Therefore there is no basis for a lower extremity impairment in either extremity under the sixth edition of the A.M.A., *Guides* and *The AMA Guides Newsletter* July/August 2009."

The medical adviser further noted that Dr. Launder rated appellant for a spinal condition using the spinal chapter of the sixth edition of the A.M.A., *Guides*, a chapter not used by OWCP.

By decision dated July 16, 2012, OWCP found that appellant was not entitled to an additional schedule award and denied modification of its prior decision.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.² FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.³ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).⁴

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or the implementing regulations.⁵ Neither FECA nor the implementing federal 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.⁶ A schedule award is permissible where the employment-related back condition affects the upper or lower extremities.⁷

The sixth edition of the A.M.A., *Guides* (2008) provides a specific methodology for rating spinal nerve extremity impairment.⁸ It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine.⁹ The impairment is premised on evidence of radiculopathy affecting the upper and/or lower extremities.¹⁰

ANALYSIS

OWCP accepted that appellant sustained a lumbar strain and lumbar radiculitis as a result of a June 20, 2009 incident. By decision dated December 2, 2011, appellant was awarded five percent impairment of the right lower extremity. He requested an increased award.

² For a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

³ 20 C.F.R. § 10.404.

⁴ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

⁵ W.C., 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

⁶ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a); see *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

⁷ *Supra* note 4 at Chapter 2.808.6a(3).

⁸ *Supra* note 4 at Chapter 3.700, Exhibit 4.

⁹ *Id.*

¹⁰ *Id.*

In reports dated December 23, 2011¹¹ and April 6, 2012 report, Dr. Launder opined that appellant had 12 percent impairment of his low back with a class 2 spinal impairment under tables found on page 571 of the sixth edition of the A.M.A., *Guides*. His impairment rating, however, is not probative as the back or spine is not a scheduled member under section 8107 of FECA. Although FECA does not provide for a schedule award for the back or spine, impairment of the extremities due to a spinal injury may be compensable.¹² Both Dr. Launder's impairment ratings are of diminished probative value and are insufficient to establish greater impairment than previously awarded.¹³

In his April 6, 2012 report, Dr. Launder opined that, under the sixth edition of the A.M.A., *Guides*, appellant had 12 percent impairment of his low back with a class 2 spinal impairment under Table 17-4, page 571. He stated that appellant's radiculopathy included a positive straight leg raising test with grade modifier of 2, but there was no motor, reflex or nerve deficit.

An OWCP medical adviser reviewed Dr. Launder's April 6, 2102 report and found no basis for a lower extremity impairment in either extremity under the sixth edition of the A.M.A., *Guides* and "The Guides Newsletter" July/August 2009. The medical adviser noted no basis for rating impairment for a spinal condition, as the spine is not a scheduled member under section 8107 or federal regulations.¹⁴ The medical adviser also noted that Dr. Launder found appellant had no sensory or motor deficits to either lower extremity. Therefore, appellant had class 0 of the lower extremity spinal nerve under Table 2, page 6 of *The Guides Newsletter* July/August 2009, which represents a zero percent lower extremity impairment.

The Board finds that OWCP properly relied upon its medical adviser to find that appellant had no greater permanent impairment of a scheduled member under the A.M.A., *Guides*.

On appeal, appellant contended that he is entitled to a greater schedule award than the one received, due to discomfort in his back to his lower extremities. As noted, Dr. Launder did not rate the impairment to appellant's legs; rather he rated the spine which is excluded from FECA coverage. He did not explain how appellant's lumbar condition caused impairment to either lower extremity. OWCP referred Dr. Launder's reports to its medical adviser who found no basis to rate impairment of the lower extremities due to appellant's accepted condition.

¹¹ Furthermore, in his December 23, 2011 report, Dr. Launder advised that he used the fourth edition of the A.M.A., *Guides*; however, impairment ratings should use the sixth edition of the A.M.A., *Guides*.

¹² See *Thomas J. Engelhart*, 50 ECAB 319 (1999).

¹³ See *Carl J. Cleary*, 57 ECAB 563, 568 at note 14 (2006) (an opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's impairment).

¹⁴ See *supra* note 6.

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 failed to establish that he is entitled to an increased schedule award.

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2013
Washington, DC

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

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

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