United States Department of Labor
Employees' Compensation Appeals Board

H.R., Appellant	)	
and	)	**Docket No. 12-1419**
	)	**Issued: January 4, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Coupeville, WA, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 20, 2012 appellant timely appealed the January 27, 2012 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 claim.

ISSUE

The issue is whether appellant has more than eight percent impairment of the right leg.

FACTUAL HISTORY

This case was previously before the Board.[2] Appellant is a 42-year-old rural carrier associate who was injured in an April 5, 2004 employment-related motor vehicle accident.

[1] 5 U.S.C. §§ 8101-8193.

[2] Docket No. 10-1368 (issued March 22, 2011).

OWCP accepted her claim for a cut on the face, multiple contusions and right acetabular fracture. It authorized a September 8, 2004 surgery to repair appellant's right hip fracture.[3] Appellant later resumed her rural carrier duties.

On December 9, 2009 OWCP granted appellant a schedule award for eight percent impairment of the right lower extremity. When on appeal, the Board found an unresolved conflict in medical opinion and remanded the case to OWCP for referral to an impartial medical examiner.[4] The Board's March 22, 2011 order remanding case is incorporated herein by reference.

OWCP prepared a statement of accepted facts and referred appellant to Dr. John F. Burns, a Board-certified orthopedic surgeon, selected as the impartial specialist. In a report dated May 23, 2011, Dr. Burns found that appellant had eight percent impairment of the right leg pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[5]

On June 15, 2011 the district medical adviser (DMA) reviewed the May 23, 2011 impairment rating of Dr. Burns. The DMA did not entirely agree with the impairment rating. Instead of eight percent right leg impairment, he found only seven percent impairment, which was the default rating (C) for a class 1 nondisplaced acetabular fracture under Table 16-4, A.M.A., *Guides* 514 (6th ed. 2008).

By decision dated June 20, 2011, OWCP found that appellant was not entitled to an additional schedule award.

Appellant requested a hearing which was held on November 9, 2011. No additional evidence was submitted.

In a January 27, 2012 decision, an OWCP hearing representative found that the evidence did not establish impairment of the right leg in excess of the eight percent previously awarded. Accordingly, she affirmed OWCP's June 20, 2011 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.[6] FECA, however, does not specify the manner by which the percentage loss of a member, function or

[3] Appellant underwent an open reduction, internal fixation (ORIF), right acetabular fracture nonunion, T-type.

[4] The conflict arose between appellant's physician, Dr. John W. Ellis, and Dr. James A. Champoux, an OWCP referral physician. Whereas Dr. Champoux found only eight percent impairment of the right lower extremity, Dr. Ellis found 46 percent impairment.

[5] The rating was based on a class 1, grade D nondisplaced acetabular fracture under Table 16-4, Hip Regional Grid -- Lower Extremity Impairments, A.M.A., *Guides* 514 (6th ed. 2008).

[6] 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).

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.[7] Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).[8]

FECA provides that if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[9] For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."[10] Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[11]

ANALYSIS

OWCP accepted that appellant sustained a fracture of the right hip. Based on a conflict in medical opinion, it referred her for an impartial evaluation. Dr. Burns examined appellant on May 23, 2011. His diagnosed mild cervical sprain by history, resolved and lumbar strain by history, resolved. With respect to appellant's right hip injury, Dr. Burns found that her nondisplaced fracture of the acetabulum had healed with good range of motion. Pursuant to Table 16-4, A.M.A., *Guides* 514 (6th ed. 2008), he rated appellant based on a diagnosis of nondisplaced acetabular fracture, which is a class 1 impairment (CDX) with a default lower extremity rating of seven percent. The DMA concurred with Dr. Burns' classification of appellant's impairment under Table 16-4.

Dr. Burns further found a net adjustment of 1, which in his opinion justified an upward adjustment from grade C to D, thus representing an eight percent impairment. He assigned a grade 1 modifier for Functional History (GMFH) due to stiffness and daily discomfort. Dr. Burns also found a grade 1 modifier for Physical Examination (GMPE) based on mild loss of range of motion. For Clinical Studies (GMCS), he found a grade 2 modifier based on appellant's

[7] 20 C.F.R. § 10.404.

[8] *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).

[9] 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[10] *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

[11] *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

status post acetabular fracture with nonunion requiring ORIF.[12] Applying the net adjustment formula resulted in a net adjustment of 1.[13]

The medical adviser disagreed with Dr. Burns' inclusion of a grade modifier 2 for clinical studies. He noted that, if a grade modifier was used for primary placement in the regional grid, it may not be used again in the impairment calculation.[14] In this instance, Dr. Burns relied in part on x-ray evidence in support of the diagnosis. Accordingly, if one excludes the grade 2 modifier for clinical studies from the net adjustment formula, then the net adjustment is zero. This precludes an adjustment from the default grade C. As such, the DMA properly found that appellant had seven percent impairment of the right lower extremity under Table 16-4, A.M.A., *Guides* 514 (6th ed. 2008).

When a case is referred to an impartial specialist to resolve a conflict, the resulting medical opinion, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[15] The Board finds that Dr. Burns' May 23, 2011 examination findings constitute the weight of medical opinion. Dr. Burns provided a well-reasoned report based on a proper factual and medical history. He accurately summarized the relevant medical evidence and relied on the latest statement of accepted facts. Dr. Burns also examined appellant and provided a thorough review of her relevant medical records. His report included detailed findings and medical rationale supporting his opinion. Dr. Burns' opinion was entitled to determinative weight.[16] Accordingly, the Board finds that the medical adviser properly utilized the findings of Dr. Burns to conclude that appellant did not have greater right lower extremity impairment in excess of the eight percent previously awarded.

CONCLUSION

Appellant has not established that she has greater than eight percent impairment of the right lower extremity.[17]

[12] The only clinical study the impartial medical examiner referenced in his report was a post-surgery x-ray.

[13] Net Adjustment: (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). *See* Section 16.3d, A.M.A., *Guides* 521 (6th ed. 2008).

[14] *See* Section 16.3, A.M.A, *Guides* 515-16 (6th ed. 2008).

[15] *Gary R. Sieber*, *supra* note 11.

[16] *Id.*

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

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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