United States Department of Labor
Employees' Compensation Appeals Board

D.K., Appellant	)	
and	)	**Docket No. 12-1190**
	)	**Issued: June 17, 2013**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Houston, TX, 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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On May 7, 2012 appellant filed a timely appeal of a February 23, 2012 merit 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 this case.

ISSUE

The issue is whether appellant has more than 4 percent impairment to the right lower extremity and 18 percent impairment to the left lower extremity, for which she received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board with respect to appellant's emotional condition claim under File No. xxxxxx761.[2] In an April 6, 2001 decision, the Board affirmed a March 9, 2000 OWCP decision denying her emotional condition claim. The facts and the circumstances of the case as set out in the Board's prior decision are incorporated herein by reference.

OWCP, under File No. xxxxxx923, accepted that on February 4, 1992 appellant, then a 32-year-old personnel clerk, sustained a contusion and internal derangement of the left knee as a result of hitting the knee on a file cabinet at work. It later authorized arthroscopic left knee surgery which was performed on March 31, 1992 and August 25, 1995 and accepted herniated discs at L4-5 and L5-S1 and a torn medial meniscus of the right knee.

Under File No. xxxxxx092 OWCP accepted that on October 22, 1997 appellant sustained a left ankle strain when she twisted her left ankle while walking on a sidewalk. It authorized left ankle arthroscopy which was performed on April 6, 1998. OWCP granted appellant a schedule award for 22 percent impairment of the left lower extremity.

OWCP, under File No. xxxxxx764, accepted that on February 20, 2001 appellant sustained a left knee sprain when she hit her knee on the corner of a desk while working in a limited-duty information receptionist position. It later accepted herniated discs at L4-5 and L5-S1 and a torn meniscus of the right knee. On July 20, 2006 appellant underwent right knee arthroscopic surgery.

By letter dated July 25, 2002, OWCP advised appellant that her claims under File Nos. xxxxxx092, xxxxxx923 and xxxxxx764 were combined into a Master File No. xxxxxx923.

On October 20, 2011 appellant filed a claim for a schedule award. In a medical report of the same date, Dr. James E. Butler, III, an attending Board-certified orthopedic surgeon, obtained a history of the accepted employment injuries and appellant's medical treatment, which included two left knee surgeries and a lumbar laminectomy at L4-5 and L5-S1 and work history. He noted her complaints of pain in the middle and lower back, left hip, right foot and toe and right hip accompanied by numbness in both legs and feet. Appellant also complained about a pins and needles and tingling sensation and hypersensitivity in the feet, a burning sensation in the legs and calves and weakness in the legs. She rated her pain as 8 out of 10 on the day of examination. Appellant rated her pain as 5 at its best and 10 at its worst. Her pain was consistent and worsened while stooping, bending, sleeping, pushing, walking, pulling, sitting, standing and reaching and during bowel movements and weather changes. Massage, medication and physical therapy lessened appellant's pain. On physical examination, Dr. Butler reported ambulation with a staggered gait and balance difficulty. Appellant appeared uncomfortable in a seated position. She utilized a cane. Appellant arrived at the examination on a stretcher. She had a well-healed surgical scar in the lumbar region measuring five inches. Deep tendon reflexes were two each in the right and left patella, zero in the right Achilles and two in the right and left Achilles. On examination of the lumbar spine, Dr. Butler reported tenderness on palpation around L4, L5 and

[2] Docket No. 00-1610 (issued April 6, 2001).

S1. No spasms were noted. Orthopedic tests of the lumbar spine were essentially negative except for positive Kernig/Brudzinsk and sitting root tests on the right. Appellant had decreased lumbar range of motion with full effort. She had essentially normal sensation of the lumbar spine except for mildly decreased sensation at left S1 and right S1 nerves. On examination of the left lower extremity, Dr. Butler reported tenderness anteriorly on palpation of the left knee. Effusion was mild on the left. A crepitation test was moderate on the left. Girth measurements included 50 centimeters each for the right and left thigh, 38.0 centimeters for the right calf, 36.5 centimeters for the left calf. Atrophy was measured as 1.5 centimeters in the right calf. There was no atrophy in the right thigh. Appellant had decreased range of motion of the left knee with full effort. Left knee flexion was 100 degrees and flexion contracture was 5 degrees. Sensation testing of the right and left lower extremities was within normal limits. Strength testing of the bilateral hips, legs and ankles was good. Appellant was unable to perform heel and toe walk. X-ray examination of the bilateral knees was normal except for minor hypertrophy of the intercondyloid eminence and minor osteophytes in the superior aspect of the patella bilaterally.

Dr. Butler advised that appellant was status post lumbar disc disorder for which she underwent surgery in 2006. Her cauda equine syndrome had not resolved. Appellant had gangrene of the right foot secondary to 10 hours of low back operation with amputation of the fourth and fifth toes. She also had osteoarthritis of the left knee secondary to multiple injuries and surgeries. Dr. Butler advised that appellant reached maximum medical improvement on June 23, 2011. Utilizing Table 16-3 on page 511 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[3] (A.M.A., *Guides*), he found that she had a class 1 impairment due to left knee osteoarthritis, two millimeters cartilage interval with a default value of C. Dr. Butler assessed a grade modifier 2 each for Functional History (GMFH) and Clinical Studies (GMCS) under Table 16-6, page 516 and Table 16-8, page 519, respectively. He assessed a grade modifier 1 for Physical Examination (GMPE) under Table 16-7, page 517. Dr. Butler applied the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) which resulted in a -1 net adjustment that required moving one position to the left of the default grade C which yielded an 18 percent impairment of the left lower extremity.

Regarding impairment to the right foot, Dr. Butler found that appellant had a class 1 amputation of her fourth and fifth toes with a default value of C under Table 16-16, page 542. He assessed a grade modifier 1 for functional history under Table 16-6, page 516 which resulted in a net adjustment formula of zero. Dr. Butler determined that a default grade C represented two percent impairment of the right lower extremity. He diagnosed class 3 cauda equine syndrome of the neurogenic bowel which resulted in 20 percent impairment of the whole person under Table 13-13, page 337.[4] Dr. Butler diagnosed class 3 cauda equine syndrome of the neurogenic bladder which also resulted in 20 percent whole person impairment under Table 13-14, page 337.

On January 17, 2012 an OWCP medical adviser reviewed Dr. Butler's report and concurred with his date of maximum medical improvement of June 23, 2011 and 18 percent left

[3] A.M.A., *Guides* (6th ed. 2009).

[4] The Board notes that Dr. Butler incorrectly stated that Table 13-13 was on page 570 rather than page 337 of the A.M.A., *Guides*.

lower extremity impairment rating. He found that appellant had a class 1 impairment with a default value of 20 percent due to left knee osteoarthritis. The medical adviser found that she had functional history and clinical studies modifiers 2 and a physical examination modifier 1 which resulted in a net adjustment of -1. Utilizing the net adjustment formula discussed above, he determined that GMFH-CDX + GMPE-CDX + GMCS-CDX or (2-2) + (1-2) + (2-2) = -1. The medical adviser concluded that a -1 adjustment to the left of default grade C resulted in a class 1, grade B or 18 percent impairment of the left lower extremity.

OWCP's medical adviser noted Dr. Butler's finding that appellant had two percent impairment to the right lower extremity. He found that appellant had a class 1 impairment for amputation of the fourth toe on the right foot which represented a two percent default value under Table 16-16, page 542. The medical adviser assigned a grade modifier 1 for functional history. He advised that grade modifiers were not applicable for physical examination and clinical studies. Utilizing the net adjustment formula, the medical adviser determined that appellant had a zero percent net adjustment. An adjustment of zero percent from the default value of C represented a class 1, grade C or two percent impairment of the fourth toe. The medical adviser determined that appellant also had a class 1 impairment with a two percent default value for amputation of the fifth toe under Table 16-16, page 542. He further determined that she had a zero net adjustment which resulted in a grade C default value or two percent impairment of the fifth toe. The medical adviser combined the two percent impairment ratings for each toe under the Combined Values Chart, page 604, which resulted in four percent impairment of the right lower extremity.

OWCP's medical adviser noted Dr. Butler's 20 percent whole person impairment ratings based on appellant's neurogenic bowel and bladder. He stated that the bowel and bladder were not scheduled members and, therefore, concluded that appellant was not entitled to any impairment rating for these conditions.

In a February 23, 2012 decision, OWCP granted appellant a schedule award for 18 percent impairment to the left lower extremity and 4 percent impairment to the right lower extremity based on the medical opinions of Dr. Butler and OWCP's medical adviser.

LEGAL PRECEDENT

The schedule award provision of FECA,[5] and its implementing federal regulations,[6] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions and organs of the body. 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[7] The A.M.A., *Guides* has been adopted by the implementing

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Ausbon N. Johnson*, 50 ECAB 304 (1999).

regulations as the appropriate standard for evaluating schedule losses.[8] Effective May 1, 2009, FECA adopted the sixth edition of the A.M.A., *Guides*[9] as the appropriate edition for all awards issued after that date.[10]

No schedule award is payable for a member, function or organ of the body not specified in FECA or in the regulations.[11] Neither FECA nor the implementing regulations authorize the payment of a schedule award for the permanent loss of use of the back or spine.[12] The Board has recognized that a claimant may be entitled to a schedule award for a permanent impairment to an extremity even though the cause of the impairment originates in the back or spine.[13]

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* has an alternative approach to rating spinal nerve impairments.[14] 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.[15]

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.[16] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[17]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to its medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser proving rationale for the percentage of impairment specified.[18]

[8] 20 C.F.R. § 10.404; *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

[9] A.M.A., *Guides* (6th ed. 2008).

[10] Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[11] *C.E.*, Docket No. 11-637 (issued October 14, 2011); *William Edwin Muir*, 27 ECAB 579 (1976).

[12] FECA specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

[13] *F.W.*, Docket No. 11-191 (issued October 17, 2011); *see also Thomas J. Englehart*, 50 ECAB 319 (1999).

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

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

[16] A.M.A., *Guides* 494-531.

[17] *Id.* at 521.

[18] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

ANALYSIS

OWCP accepted appellant's claim for contusion, internal derangement and sprain of the left ankle, herniated discs at L4-5 and L5-S1 and a torn meniscus of the right knee. On February 23, 2012 appellant received a schedule award for 18 percent impairment of the left lower extremity and 4 percent impairment of the right lower extremity. The Board finds that she did not meet her burden of proof to establish greater impairment.

On October 20, 2011 appellant's attending physician, Dr. Butler, opined that appellant reached maximum medical improvement on June 23, 2011 based on his examination findings. He found that appellant was status post 2006 lumbar surgery. Dr. Butler found that her cauda equine syndrome had not resolved. He diagnosed gangrene of the right foot as a result of 10 hours of low back operation with amputation of the fourth and fifth toes. Dr. Butler also diagnosed osteoarthritis of the left knee secondary to multiple injuries and surgeries. He determined that appellant had 18 percent impairment of the left lower extremity and 4 percent impairment of the right lower extremity. In determining the left lower extremity impairment, Dr. Butler, utilized the sixth edition of the A.M.A., *Guides*, and identified a class 2 impairment due to appellant's left knee osteoarthritis, two millimeters cartilage interval with a default value of C (A.M.A., *Guides* 511, Table 16-3). He assessed a grade modifier 2 each for functional history and clinical studies (A.M.A., *Guides*, 516, 519, Table 16-6, Table 16-8) and a grade modifier 1 for physical examination (A.M.A., *Guides* 517, Table 16-7). Dr. Butler applied the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) and calculated a net adjustment of -1 that required moving one position to the left of the default grade C which resulted in 18 percent impairment of the left lower extremity.

On the right, Dr. Butler determined that appellant had a class 1 amputation of her fourth and fifth toes with a default value of C (A.M.A., *Guides* 542, Table 16-16). He assigned a grade modifier 1 for functional history (A.M.A., *Guides* 516, Table 16-6). Dr. Butler did not provide any modifiers for physical examination or clinical studies. Utilizing the net adjustment formula discussed above, he found a net adjustment of zero which yielded a grade C default value or two percent impairment of the right lower extremity.

Dr. Butler advised that appellant had a class 3 impairment which represented 20 percent impairment of the whole person each for cauda equine syndrome with a neurogenic bowel and bladder (A.M.A., *Guides* 337, Table 13-13, Table 13-14).

The file was then properly routed to an OWCP medical adviser for an opinion concerning the nature or percentage of permanent impairment in accordance with the A.M.A., *Guides*.[19] On January 17, 2012 the medical adviser utilized Dr. Butler's findings, referenced the sixth edition of the A.M.A., *Guides* and concurred with his opinion that appellant reached maximum medical improvement on June 23, 2011 and she had 18 percent impairment to the left lower extremity. He determined that appellant had a class 1 impairment with a default value of 20 percent due to osteoarthritis of the left knee (A.M.A., *Guides* 511, Table 16-3). The medical adviser found a grade modifier 2 each for functional history and clinical studies and a grade modifier 1 for

[19] *Id.*

physical examination (A.M.A., *Guides* 516, 517, 519, Table 16-6, Table 16-7, Table 16-8). He averaged and adjusted the grade modifiers to find a class 1, grade B or 18 percent impairment of the left lower extremity.

As for the right lower extremity, the medical adviser noted that, while Dr. Butler determined that appellant had two percent impairment for the amputations. He found that she actually should have two percent impairment for each lost toe. The medical adviser indicated that she had a class 1 impairment for amputation of the fourth toe on the right foot which represented a default value of two percent (A.M.A., *Guides* 542, Table 16-16). He assigned a grade modifier 1 for functional history and advised that grade modifiers for physical examination and clinical studies were not applicable. The medical adviser applied the net adjustment formula which resulted in a zero net adjustment. He determined that an adjustment of zero from the default value of C represented a class 1, grade C or two percent impairment of the fourth toe. Regarding impairment due to amputation of the fifth toe on the right foot, the medical adviser determined that appellant also had a class 1 impairment with a default value of two percent and a grade modifier 1 for functional history. The medical adviser again found that grade modifiers for physical examination and clinical studies were not applicable. The net adjustment formula was applied and resulted in a zero net adjustment from the default grade C value which resulted in two percent impairment of the fifth toe. The medical adviser used the Combined Values Chart (A.M.A., *Guides* 604) to arrive at four percent impairment of the right lower extremity.

The Board finds that OWCP's medical adviser properly applied the A.M.A., *Guides* to Dr. Butler's report to find that appellant had 18 percent impairment to the left lower extremity and 4 percent impairment to the right lower extremity. The Board further finds that he correctly stated that appellant was not entitled to a schedule award for 20 percent whole person impairment each to the neurogenic bowel and bladder as found by Dr. Butler as neither organ is a scheduled member under FECA or OWCP regulations.[20] No schedule award is payable for a member, function or organ of the body not specified in FECA or in the implementing regulations. FECA does not provide for OWCP to add organs or functions to the compensation scheduled on a case-by-case basis and the Board does not have the power to enlarge the provisions of either statute or regulations.[21]

The Board finds that the weight of the medical evidence rests with OWCP's medical adviser, who provided sufficient medical rationale for his conclusion that appellant, had 18 percent impairment of the left lower extremity and 4 percent impairment of the right lower extremity. Further, appellant has not submitted sufficient medical evidence to establish that, as a result of her accepted employment injuries, she sustained any permanent impairment to another scheduled member or function such that she would be entitled to an additional schedule award pursuant to the A.M.A., *Guides*. The Board finds, therefore, that she is not entitled to a schedule award for permanent impairment to the bowel or bladder.

[20] 5 U.S.C. § 8107(c); *supra* note 6.

[21] *D.J.*, Docket No. 11-1359 (issued February 24, 2012).

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 has no more than 18 percent impairment of the left lower extremity and 4 percent impairment of the right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board