United States Department of Labor
Employees' Compensation Appeals Board

B.P., Appellant	)	
and	)	**Docket No. 13-196**
	)	**Issued: March 26, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

Appearances:
Alan J, Shapiro, Esq., for the appellant
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 5, 2012 appellant filed a timely appeal from an October 15, 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 a permanent impairment to a scheduled member or function of the body warranting a schedule award pursuant to 5 U.S.C. § 8107.

FACTUAL HISTORY

The case was before the Board on a prior appeal. By decision dated September 30, 2011, the Board set aside a December 22, 2010 OWCP decision.[2] OWCP developed the evidence

[1] 5 U.S.C. § 8101 *et seq.*

[2] Docket No. 11-588 (issued September 30, 2011).

regarding a schedule award by referring appellant to Dr. Manhal Ghanma, an orthopedic surgeon. The accepted condition was an aggravation of perianal hidradenitis suppurativa, International Classification of Diseases (ICD) No. 705.83.[3] The Board found that Dr. Ghanma's opinion that appellant had no permanent impairment was of diminished probative value, as the physician provided no history, findings on examination, or reference to specific tables or figures in the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*). The case was remanded to secure a rationalized medical opinion on permanent impairment. The history of the case as provided in the Board's prior decision is incorporated herein by reference.

With respect to medical evidence submitted by appellant, Dr. Timothy Morley, an osteopath, noted in a January 26, 2009 report that he complained of pain and weakness in the left leg following surgeries for the accepted condition. In a report dated August 29, 2009, Dr. William Grant, a Board-certified internist, briefly stated that appellant had a 35 percent impairment (as a class 3 impairment) under Table 8-2 of the A.M.A. *Guides*. He noted that appellant's "skin disorder is consistent with signs and symptoms (scars) consistent with Table 8-3 on page 180."[4]

On remand, OWCP referred appellant to Dr. Kenneth Chapman, a Board-certified orthopedic surgeon.[5] In a report dated January 22, 2012, Dr. Chapman reviewed a history of injury and provided results on examination and addressed specific questions by OWCP regarding its impairment. He examined appellant and noted there were superficial welts and scars in his anal area. Dr. Chapman indicated that examination of the left leg and thigh was normal, and there was no basis for impairment under a regional grid. He further found that there was no impairment under Table 8-2, as appellant would be a class 0 (zero) under the criteria presented in that table.

OWCP referred the case to an OWCP medical adviser for review. In a report dated April 11, 2012, the medical adviser concurred with Dr. Chapman's assessment. He stated that there were no objective findings sufficient to establish a permanent impairment.

By decision dated May 4, 2012, OWCP found that the weight of the evidence did not establish a ratable permanent impairment. It noted that, although Dr. Chapman was selected as a referee physician, there was no conflict in the medical evidence.

Appellant requested a hearing before an OWCP hearing representative, which was held on August 7, 2012.

[3] As the Board noted, appellant also had other compensation claims accepted for a right knee injury on December 24, 2004, carpal tunnel syndrome and a neck strain on September 22, 2008.

[4] Table 8-3 is a skin impairment evaluation summary discussing various skin disorders. Table 8-2 provides whole person impairment ratings for skin disorders. A.M.A., *Guides* 166-81.

[5] The record indicates that OWCP selected Dr. Chapman through the procedure for selecting a referee physician to resolve a conflict in the medical evidence.

In a decision dated October 15, 2012, the hearing representative affirmed the May 4, 2012 OWCP decision. The hearing representative found the weight of the evidence was represented by Dr. Chapman.

LEGAL PRECEDENT

The schedule award provision of FECA[6] and its implementing regulations[7] 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.[8] The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[9] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.[10]

The Board notes that OWCP issued the revised implementing federal regulations effective August 29, 2011. The new regulations provide that, pursuant to the authority provided by 5 U.S.C. § 8107(c)(22), skin has been added to the list of scheduled members for which FECA provides compensation for loss. A schedule award for the skin may be paid for injuries sustained on or after September 11, 2001.[11] With respect to disfigurement or scarring of the skin, FECA also provides: "For serious disfigurement of the face, head, or neck of a character likely to handicap an individual is securing or maintaining employment, proper an equitable compensation not to exceed $3,500[.00] shall be awarded in addition to any other compensation payable under this schedule."[12]

ANALYSIS

On the prior appeal to the Board, the case was remanded to OWCP to properly secure a rationalized medical opinion with respect to the schedule award issue. Although the selection of Dr. Chapman was made pursuant to procedures for a referee physician,[13] there was no conflict in the medical evidence. The report of second opinion physician Dr. Ghanma was of little probative value, as the Board noted in its prior decision. The opinion of Dr. Grant that appellant

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404 (1999).

[8] *See Ronald R. Kraynak*, 53 ECAB 130 (2001); *August M. Buffa*, 12 ECAB 324 (1961).

[9] 20 C.F.R. § 10.404 (1999).

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

[11] 20 C.F.R. § 10.404 (2011).

[12] 5 U.S.C. § 8107(c)(21).

[13] When there is a disagreement between an attending physician and an OWCP physician, a third physician is selected to make an examination. 5 U.S.C. § 8123(a). This is known as a referee examination. 20 C.F.R. § 10.321.

had a 35 percent impairment was also of diminished probative value. He did not explain in any detail how he rated impairment under Table 8-2, which does not specifically provide for a 35 percent impairment (for a class 3 impairment, the grade C default value is 36 percent and a grade B impairment is 33 percent).[14] Table 8-2 provides specific and detailed descriptions for assigning the appropriate class of impairment, and Dr. Grant referred only briefly to appellant's "signs and symptoms" being consistent with Table 8-3, without further explanation. Table 8-3 discusses a number of skin disorders. Dr. Grant did not explain how he determined a class 3 impairment under Table 8-2. The Board also notes that Table 8-2 provides whole person impairment ratings, which are not used under FECA and must be converted to a skin impairment.[15]

When medical reports are of diminished probative value, there is no conflict in the medical evidence warranting referral to a referee physician.[16] The referral to Dr. Chapman is therefore as a second opinion examiner.[17] The January 22, 2012 report provides a detailed review of the medical evidence and provides results on physical examination. With respect to Table 8-2, Dr. Chapman explained his determination that appellant had a class 0 impairment. He noted that class 0 refers to the lack of medication, interference with daily activities and current skin disorder signs. Dr. Chapman also found that physical examination and diagnostic test findings were consistent with no impairment.

With respect to any impairment to the left leg, Dr. Chapman noted that examination results were normal. The diagnosis-based regional grids for the lower extremities are found in Chapter 16, and Dr. Chapman found no basis for an impairment.[18] OWCP's medical adviser concurred that no lower extremity impairment was established by Dr. Chapman's findings.

As to the provision under 5 U.S.C. § 8107(c)(21) regarding skin disfigurement, this applies only to the face, head, or neck and is not applicable in this case.

The Board finds that Dr. Chapman provided a rationalized medical opinion on the issue presented. In contrast with Dr. Grant, the second opinion examiner discussed the specific provisions of Table 8-2 and explained how the table was applied to the findings on examination. The Board accordingly finds that Dr. Chapman represents the weight of the medical evidence in this case. Appellant may at any time request a schedule award and submit additional probative evidence with respect to a permanent impairment to a scheduled member of the body.

[14] A.M.A., *Guides* 166, Table 8-2.

[15] *Janae J. Triplette*, 54 ECAB 792 (2003). FECA Bulletin No. 11-07 (issued August 10, 2011) discusses the calculations required to convert a whole person impairment to a skin impairment.

[16] *See Mary L. Henninger*, 52 ECAB 408 (2001).

[17] *See Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

[18] A.M.A., *Guides* 497-521.

CONCLUSION

The Board finds that appellant has not established entitlement to a schedule award under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 15, 2012 is affirmed.

Issued: March 26, 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