United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 13-961**
	)	**Issued: January 23, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Milwaukee, WI, Employer	)	

Appearances:
Marie Delvecchio, for the appellant
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 March 28, 2013 appellant filed a timely appeal from the January 31, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUES

The issues are: (1) whether appellant established more than 29 percent permanent impairment of his right upper extremity and 27 percent permanent impairment of his left upper extremity, for which he received schedule awards; and (2) whether appellant established a back condition causally related to the accepted injury.

FACTUAL HISTORY

This case has previously been on appeal before the Board. In a September 12, 2005 decision, the Board found that there was no medical evidence establishing that appellant had

more than 27 percent impairment of the right and left arms, for which he received schedule awards.[1] In a December 18, 2007 decision,[2] the Board found that he had not established that he had more than 29 percent impairment of the right upper extremity and 27 percent impairment of the left upper extremity. The facts and the history contained in the prior appeals are incorporated by reference.

The relevant facts include that OWCP accepted appellant's claim for right ulnar neuropathy and authorized right ulnar nerve transposition surgery. OWCP also accepted his claim for bilateral C7, C8 cervical radiculopathy with surgery and aggravation of cervical spondylosis. It authorized a redo ulnar nerve transposition on May 4, 1998 on the right arm. On November 3, 1998 OWCP accepted appellant's claim for a left elbow strain and authorized diagnostic studies. Additionally, it authorized a posterior cervical decompressive laminectomy and anterior fusion from C3-7 on May 15, 2000. On July 12, 2001 OWCP accepted appellant's claim for major depression, single episode, resolved on June 27, 2001 and on December 28, 2001 it accepted his claim for recurrence of depression on December 28, 2001. On March 26, 2002 OWCP combined appellant's files under File No. xxxxxx786.[3] It also later accepted thoracic or lumbosacral neuritis or radiculitis. Appellant received compensation benefits.

In a September 1, 2011 report, Dr. Diane Braza, a Board-certified physiatrist, noted that appellant needed an updated disability assessment. She examined him and provided findings. Dr. Braza advised that appellant had changes due to his laminectomies at C3 through C7. She noted a posterior bony fusion from C3 through T2 with metallic instrumentation from C6 to T2 and no complication. Dr. Braza opined that, given his additional cervicothoracic spine surgery, with restricted cervical mobility and chronic neck pain, she assessed 30 percent whole person impairment using combined values from the A.M.A., *Guides.* She opined that appellant had 19 percent whole person cervical impairment plus 14 percent whole person thoracic impairment.

By letter dated November 16, 2011, OWCP advised appellant that schedule awards for permanent impairment may not be paid for the spine. He was advised that he should provide a copy of the letter to his physician and if there was a work-related spinal nerve injury which had caused permanent impairment to the upper or lower extremities, the approach to the evaluation of spinal nerve impairment (such as radiculopathy affecting the extremities) was consistent with the A.M.A., *Guides* and was discussed in the July/August issue of *The Guides Newsletter*.[4]

On November 19, 2011 and May 27, 2012 appellant filed claims for an increased schedule award. In a December 20, 2011 work capacity evaluation, Dr. Braza advised that appellant was totally disabled and unable to work. She indicated that he had reached maximum medical improvement.

[1] Docket No. 05-456 (issued September 12, 2005).

[2] Docket No. 007-1034 (issued December 18, 2007).

[3] File No. xxxxxx786, File No. xxxxxx585 and File No. xxxxxx318.

[4] Rating Spinal Nerve Extremity Impairment using the sixth edition, *The Guides Newsletter* (A.M.A., Chicago, IL), July/August 2009.

In a January 11, 2012 report, Dr. Trinh G. Truong, a Board-certified physiatrist, noted appellant's history of injury and treatment and examined appellant. He diagnosed degenerative L3-4 and L4-5 spondylolisthesis with bilateral radiculopathy and noted it was a CDX class 4 pursuant to Table 17-4 of the A.M.A., *Guides*.[5] Dr. Truong noted increased pain with normal activities and explained that his functional history adjustment was a grade 2 modifier. He advised that physical examination adjustment warranted a grade 1 for diminished light touch and 4/5 strength in quadriceps and hip flexors. Dr. Truong indicated that the clinical studies adjustment was grade 2 for segmental instability. He utilized the net adjustment formula and opined that appellant had a class 4 grade A which was equal to "25 percent impairment rating for permanent and stationary leg pain total (25 percent total for both legs)."

On February 15, 2012 OWCP determined that appellant had no wage-earning capacity or reemployment potential for the indefinite future.

In a letter dated May 22, 2012, appellant's representative noted that while a schedule award was not payable for the back, the back could be considered to the extent that it resulted in a permanent impairment of the extremities. He noted that appellant had a prior award for his cervical injury and how it affected his upper extremities. Appellant's representative advised that appellant also had an accepted lumbar condition and provided the report from Dr. Truong.

In a May 28, 2012 report, OWCP's medical adviser noted that appellant's case was reviewed for the purpose of determining bilateral upper and lower extremity impairment due to the accepted condition of cervical radiculopathy. He noted that no lower extremity conditions were accepted as work related. The medical adviser also indicated that appellant had already received awards in the amount of 29 percent to right upper extremity and 27 percent to the left upper extremity for a herniated disc.[6] He reviewed Dr. Truong's January 11, 2012 report, in which he indicated that appellant had complaints of low back pain radiating into the posterior thighs and legs and advised that the pain was associated with numbness in the lateral aspect of the legs as well as intermittent buckling of the knees. The medical adviser noted that physical examination demonstrated loss of lumbar spine range of motion and the straight leg raise and femoral stretch tests were negative bilaterally. He also noted that Dr. Truong conducted manual muscle testing which revealed slight loss of strength in the quadriceps bilaterally. The medical adviser found that x-rays of the lumbar spine revealed degenerative changes and disc space narrowing at L3-4 and L4-5 and that a magnetic resonance imaging (MRI) scan of the lumbar spine revealed central canal stenosis at L3-4 and L4-5. He noted that Dr. Truong recommended 25 percent impairment based upon Table 17-4 of the A.M.A., *Guides.* However, the medical adviser explained that Dr. Truong's rating should be disregarded as Table 17-4 addressed whole person impairments, which were not recognized by OWCP. He further explained that appellant's claim was not accepted for any lumbar condition. The medical adviser opined that there was no basis for any additional impairment to the upper or lower extremities.

[5] Table 17-4 rates whole person impairment. A.M.A., *Guides* 570-74.

[6] The record indicates that the previous schedule awards were paid with regard to C7-8 radiculopathy, cervical spondylosis, a left elbow strain and right ulnar neuropathy.

In a June 5, 2012 telephone call memorandum, OWCP noted that appellant's representative called to inquire whether a lumbar condition had been accepted. However, OWCP advised the representative that a lumbar condition had not been accepted.

By decision dated June 6, 2012, OWCP found that appellant was not entitled to receive a greater schedule award. It also noted that it had not accepted a lumbar condition.

In a letter dated October 11, 2012, appellant's representative advised OWCP that on November 17, 2010, OWCP expanded the claim to include lumbosacral neuritis/radiculitis. She argued that "this condition was for the lumbar spine, not the thoracic spine. Appellant's representative noted that there was nothing in the record prior to OWCP's expansion letter that would indicate that a thoracic condition even existed. She explained that the medical record indicated that a lumbar condition existed. Appellant's representative requested that the statement of accepted facts be amended to include Dr. Truong's impairment rating to the lower extremities. On October 22, 2012 OWCP received a letter from appellant's representative requesting reconsideration. She argued that appellant's back condition should be accepted. Appellant's representative alleged that the medical evidence supported that appellant developed a work-related lumbar condition.

In a September 7, 2012 report, Dr. Nanjapareddy Muni Reddy, Board-certified in physiatry, noted that appellant complained of chronic back pain for the past 17 years. He indicated that it started while working at the employing establishment as a clerk, which required working at a machine, standing up and lifting mailbags that weighed 20 to 50 pounds. Additionally, the duties included bending, lifting and carrying the mailbags. Dr. Reddy advised that appellant developed back pain after working at the employing establishment for 15 years. He advised that appellant received treatment for his neck pain, including the C3-7 decompression and fusion for cervical myelopathy and radiculopathy. Dr. Reddy advised that he previously received imaging of his lower back pain in 2010 and therapy, which helped. He diagnosed chronic lumbar strain with probable cumulative trauma and accelerated degenerative joint disease (DJD), long-term opiate use for chronic pain, no radiculopathy, cervical decompression and fusion for cumulative trauma and accelerated degeneration probable right greater trochanteric bursitis (GTB), unrelated to low back pain and depression.

By decision dated January 31, 2013, OWCP denied modification of its prior decision. It found that the medical evidence was insufficient to establish an additional back condition due to the original injury of August 16, 1995.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA,[7] and its implementing federal regulations,[8] 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

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

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.[9] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[10] For decisions issued after May 1, 2009, the sixth edition will be used.[11]

In addressing upper extremity impairments, 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), Physical Examination (GMPE) and Clinical Studies (GMCS).[12] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[13]

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter* offers an approach to rating spinal nerve impairments consistent with sixth edition methodology.[14] OWCP has adopted this approach for rating impairment to the upper or lower extremities caused by a spinal injury.[15]

ANALYSIS -- ISSUE 1

In support of his claim for an additional schedule award, appellant's representative submitted two reports. In a September 1, 2011 report, Dr. Braza opined that appellant had 30 percent whole person impairment. The Board notes that FECA, however, does not provide a schedule award based on whole person impairments.[16] Thus, this report is of limited probative value.

Appellant also provided a January 11, 2012 report, from Dr. Truong, who diagnosed degenerative L3-4 and L4-5 spondylolisthesis with bilateral radiculopathy, and opined that appellant had a 25 percent impairment rating for permanent and stationary leg pain. However, this is not an accepted condition and Table 17-4 of the A.M.A., *Guides*, under which he rated impairment, provides for whole person impairment. As noted, whole person impairment cannot be awarded under FECA.[17] In a May 28, 2012 report, OWCP'S medical adviser also asserted

[9] *Id*. at § 10.404(a).

[10] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

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

[12] A.M.A., *Guides* 389-412; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

[13] A.M.A., *Guides* 411.

[14] *L.J.*, Docket No. 10-1263 (issued March 3, 2011).

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

[16] *See Tania R. Keka*, 55 ECAB 354 (2004); *James E. Mills*, 43 ECAB 215 (1991) (neither FECA, nor its implementing regulations provide for a schedule award for impairment to the body as a whole).

[17] *See id.*

that the additional evidence provided by appellant provided no basis on which to issue any additional schedule award. As the reports from appellant's physicians did not explain how any additional impairment to a scheduled body member was calculated pursuant to the A.M.A., *Guides*, they are of limited probative value and insufficient to establish entitlement to an additional schedule award.[18] There is no medical evidence in the record establishing that appellant had more than the 29 percent impairment of the right and 27 percent impairment of the left upper extremities for which he received a schedule award.

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.

LEGAL PRECEDENT -- ISSUE 2

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.[19] Causal relationship is a medical issue and the medical issue generally required to establish causal relationship is rationalized medical opinion evidence.[20] Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[21] The opinion of the physician must be based on a complete factual and medical background of the claimant[22] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[23]

ANALYSIS -- ISSUE 2

OWCP accepted appellant's claim for right ulnar neuropathy and authorized right ulnar nerve transposition surgery. It also accepted appellant's claim for bilateral C7, C8 cervical radiculopathy with surgery and aggravation of cervical spondylosis. OWCP authorized a redo ulnar nerve transposition on May 4, 1998 on the right arm. On November 3, 1998 it accepted appellant's claim for a left elbow strain and authorized diagnostic studies. Additionally, OWCP authorized a posterior cervical decompressive laminectomy and anterior fusion from C3-7. It also accepted thoracic or lumbosacral neuritis or radiculitis. Appellant's representative requested

[18] *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).

[19] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[20] *John J. Montoya*, 54 ECAB 306 (2003).

[21] *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[22] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[23] *Judy C. Rogers*, 54 ECAB 693 (2003).

that OWCP expand her claim for an additional back condition, but it was denied. The Board finds that OWCP properly denied appellant's claim for an additional work-related back injury.

The evidence submitted by appellant included a September 7, 2012 report from Dr. Reddy, who noted that appellant complained of chronic back pain for the past 17 years. Dr. Reddy noted that appellant's work duties as a clerk, required working at a machine, standing up and lifting and carrying mailbags that weighed 20 to 50 pounds. He advised that appellant developed back pain after working at the employing establishment for 15 years. Dr. Reddy diagnosed chronic lumbar strain with probable cumulative trauma and accelerated DJD, long-term opiate use for chronic pain, no radiculopathy, cervical decompression and fusion for cumulative trauma and accelerated degeneration probable right GTB, unrelated to low back pain and depression.

The Board notes that, although she diagnosed a lumbar strain, she did not explain how this diagnosis related to the accepted 1995 injury. The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the accepted work injury.[24] Here, Dr. Reddy has not explained the reasons why particular work factors or accepted conditions caused or aggravated a particular diagnosed medical condition. Other medical evidence submitted by appellant did not explain why any additional back condition is causally related to the accepted work injury. Thus, appellant did not meet his burden of proof to establish a back condition causally related to the accepted injury.

On appeal, appellant's representative argued that Dr. Reddy's September 7, 2012 report supported that the low back condition was work related. She also argued that there was no contradictory evidence, and it was unclear why OWCP did not further develop the record with regard to the back condition. However, as found above, the medical evidence did not provide sufficient support to establish an additional work-related back condition.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained more than 29 percent permanent impairment of his right upper extremity and 27 percent permanent impairment of his left upper extremity, for which he received schedule awards. The Board further finds that appellant has not established a back condition as a consequence of the accepted injuries.

[24] *Joan R. Donovan*, 54 ECAB 615 (2003); *Tomas Martinez*, 54 ECAB 623 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2014
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