United States Department of Labor
Employees' Compensation Appeals Board

A.B., Appellant	)	
and	)	**Docket No. 13-1487**
	)	**Issued: July 29, 2014**
DEPARTMENT OF THE NAVY, MARINE CORPS, Camp Lejeune, NC, 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, Acting Chief Judge[1]
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 10, 2013 appellant filed a timely appeal from March 5, 2013 schedule award decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUE

The issue is whether appellant has more than 15 percent impairment of the right leg or 4 percent impairment of the right arm, for which he received schedule awards.

[1] Effective May 20, 2014, Patricia Howard Fitzgerald was appointed Acting Chief Judge.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 8, 2009 appellant, then a 55-year-old pipefitter, removed a condensate tank cover and sustained second degree steam burns to his body. The claim was accepted by OWCP for second degree burns of multiple sites of the trunk, burns involving 10 to 19 percent of the body surface and second degree burns to multiple sites. Appellant was hospitalized until December 21, 2009 and received multiple skin grafts. He returned to full-time modified duty on January 10, 2010. Appellant continued to receive medical treatment for the accepted conditions.

On April 27, 2012 appellant filed a schedule award claim. In a March 15, 2011 report, Dr. Bryan J. Cicuto, an attending osteopath, advised that appellant sustained a 14 percent total body surface work-related scald burn on December 8, 2009. Physical examination demonstrated the graft and donor sites to be closed. The right upper extremity autograph had scattered areas of hypertrophy and did the right thigh. There was full range of motion of the lower extremities with equal strength bilaterally of the upper and lower extremities. There was reduced sensation to light touch over the deep peroneal nerve distribution. Dr. Cicuto noted that appellant's neurological complaints did not appear to be related to the accepted burn, but was reminiscent of a diabetic neuropathy although appellant denied being a diabetic. Under section 8.7 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),[3] the Criteria for Rating Permanent Impairment due to Skin Disorders, appellant had a class 2 skin disorder which represented 15 percent whole body impairment.

On June 22, 2012 OWCP advised appellant to submit additional evidence in support of his claim. It provided material concerning the rating of skin impairment and advised him to take the letter to his physician for review.

In an August 28, 2012 report, Dr. Bruce A. Cairns, Board-certified in general and critical care surgery, presented findings on examination. Appellant had a late effect burn injury with skin graft over his right elbow with no obvious decreased range of motion, open sites or signs of infection. The abdominal wound showed late effects of burn injury. For the right leg, Dr. Cairns advised that appellant had superficial peroneal neuropathy with numbness in his legs and feet, variability of skin color and the need to use sunscreen and moisturizing creams for protection. He found that appellant had a work-related 14 percent total body surface scald injury of his right arm, abdomen and right leg with associated neurological deficits. Maximum medical improvement was reached that date, based on appellant's examination. Dr. Cairns stated that appellant's permanent impairment was based on the December 8, 2009 burn injury that required skin grafts, stating that he had late effects of the injury which clearly affected temperature, sensation, aching and other issues associated with a burn injury. He advised that the superficial peroneal neuropathy with numbness in appellant's legs and feet had an obvious impact on his ability to work during the day and that he would need sunscreen and other medications. Dr. Cairns concluded that, under Table 8-2, Criteria for Rating Permanent Impairment due to Skin Disorders, appellant had a class 2 skin disorder which represented 15 percent impairment of the right leg and four percent impairment of the right arm.

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

On October 26, 2012 OWCP referred appellant to Dr. Karen Buckley, a Board-certified plastic surgeon, for a second opinion, who provided a statement of accepted facts and a set of questions regarding skin impairment. In a report dated November 1, 2012, Dr. Buckley reviewed the history of injury and medical records. Physical examination demonstrated well-healed, supple, soft scars on the right arm measuring 18 by 9 centimeters that was not causing a flexion contracture. There was a good range of motion of the arm. Dr. Buckley noted some hyperemia and patterning, consistent with meshing of the skin graft and stated that the skin was thin, as to be expected with a split thickness skin graft, which was vulnerable to future trauma. She advised that the lower two-thirds of appellant's anterior abdomen had an appearance consistent with a meshed split thickness skin graft, with no area of contracture, hypertrophy, breakdown or blistering. The abdominal skin had the atrophic texture of a healed split thickness skin graft and indicated that at appellant's right groin, there was a 24 by 17 centimeter area that appeared to be a deeper burn that required a deeper excision, which was covered with a well-healed split thickness skin graft. A small amount of hypertrophy was present in this area with mild banding, but no joint contracture and good motion across the area of the burn in his groin. Appellant reported intermittent symptoms in this area, with some abnormal sensation, which would be consistent with areas of split thickness skin grafts for full thickness burns. Dr. Buckley reported that appellant's major concern was numbness from his right knee downward and advised that he had weak, though present dorsiflexion of the foot. She stated that appellant had a blunt nerve or soft tissue injury to his spine at the time of the burn, indicating that it was highly likely that he sustained the peroneal nerve injury at the time of the work injury.

Dr. Buckley found that appellant had reached maximum medical improvement for the skin and soft tissue injuries from the burn. She advised that the injured areas would need to be protected from shearing forces and trauma, as the skin would always be thinner and more easily injured than unscarred skin, and would need to be monitored for life. Dr. Buckley stated that the grafted areas would not be able to make normal oils and would need increased moisturization compared to the unscarred skin. Appellant would need pain medication, not only for the peroneal nerve injury but for paresthesias in the burn scar. While he was back at work, he would need additional support at work due to intermittent symptoms. Dr. Buckley stated that she concurred with the report of Dr. Cairns and his impairment ratings.

In a January 16, 2013 report, Dr. H.P. Hogshead, an OWCP medical adviser Board-certified in orthopedic surgery, reviewed the medical record. He found that maximum medical improvement was reached on November 1, 2012. Dr. Hogshead agreed with the findings of Dr. Cairns under Table 8-2 of the A.M.A., *Guides* and agreed that appellant had four percent skin impairment of the right arm and 15 percent skin impairment of the right leg. He noted that under Table 16-12 for a class 2, mild motor deficit of the common peroneal nerve, appellant had 14 percent impairment. Dr. Hogshead stated that combining the 15 percent skin impairment with the 14 percent peroneal nerve impairment, would result in a total right leg impairment of 27 percent.

On February 11, 2013 OWCP referenced Dr. Buckley's report and asked that Dr. Hogshead provide a supplementary opinion regarding the rating for the skin. Dr. Hogshead advised that Dr. Cairns was correct and that appellant had 4 percent impairment of the right arm and 15 percent impairment of the right leg.

On March 5, 2013 OWCP granted appellant schedule awards for 15 percent right leg impairment and 4 percent right arm impairment. The awards were based on the opinion of Dr. Cairns. OWCP noted that the case was still under development for an additional schedule award based solely on skin impairment.

LEGAL PRECEDENT

The schedule award provision of FECA[4] and its implementing federal regulations[5] 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[6] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.[7] For decisions issued after May 1, 2009, the sixth edition is used.[8]

In August 2011 the Secretary of Labor added skin to the list of scheduled members. As described in FECA Bulletin No. 11-07, a schedule award for the skin may be paid for injuries occurring on or after September 11, 2001, for up to 205 weeks of compensation.[9] FECA bulletin and OWCP procedures describe the procedure to be followed in evaluating skin impairment.[10] The impairment rating should relate only to the skin condition and not to other underlying impairments associated with disfigurement or loss of function, since these should be addressed separately and, as described in the A.M.A., *Guides* and OWCP procedures, the maximum allowable whole-person impairment for the skin is 58 percent. The final impairment payable for the skin is determined by dividing the actual whole person impairment of the claimant by the maximum allowed (58 percent) and then converting that number to a final percentage for skin impairment.[11]

Section 8.3 of the A.M.A., *Guides* provides instruction as to rating impairment due to scars and skin grafts.[12] The section provides that "[w]hen impairment resulting from a burn or scar is based on peripheral nerve dysfunction or loss of range of motion, evaluate the skin

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id*.

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

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

[9] FECA Bulletin No. 11-07 (issued August 10, 2011); *see supra* note 4.

[10] FECA Bulletin 11-07, *id*.; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(c)(4) (February 2013).

[11] FECA Bulletin 11-07, *supra* note 8.

[12] *Supra* note 2 at 162-63.

impairment separately and combine the impairment rating with that of Chapter 15, The Upper Extremities or Chapter 16, The Lower Extremities…."

ANALYSIS

The accepted conditions in this case for second degree burns of multiple sites of the trunk, burns involving 10 to 19 percent of the body surface and second degree burns to multiple sites. On March 5, 2013 appellant was granted schedule awards for 4 percent right arm impairment and 15 percent right leg impairment. OWCP advised him that the case was under development regarding impairment based on his loss of the skin.

The Board notes that Dr. Hogshead adopted the findings by Dr. Cairns that appellant had 4 percent right arm impairment and 15 percent right leg impairment based on his accepted injury. The medical record does not establish, however, how Dr. Cairns made the impairment ratings to appellant's upper and lower extremities with reference to Chapters 15 or 16. Dr. Cairns stated that his analysis was based on application of Chapter 8 relevant to rating skin impairment. He did not address either Chapters 15 or 16, which pertained to rating impairment to the upper and lower extremities. Dr. Cairns' rating of impairment to appellant's right arm and right leg was accepted by Dr. Buckley and Dr. Hogshead. Dr. Hogshead, the medical adviser noted that appellant's right leg peroneal injury could be rated under Chapter 16-12, page 535 as 14 percent impairment; however, he did not fully address the criteria for assigning a class 2 moderate problem or any of the applicable grade adjustments. Therefore, his rating is of reduced probative value.

OWCP advised that appellant's impairment to his skin was under development. Therefore, absent a final decision, it is not an issue before the Board on this appeal. The Board is unable to clearly visualize how Dr. Cairns applied the A.M.A., *Guides* to rate appellant's right arm or leg impairment. Dr. Cairns referenced possible peroneal nerve dysfunction with regards to the right leg on physical examination, but did not make his rating of impairment to the nerve utilizing Chapter 16, as is referenced under section 8.3. Further, there was no reference to any specific nerve dysfunction to the right arm as a residual of the accepted conditions. It remains unclear how the four percent right arm rating was made with specific reference to Chapter 15.

Both Dr. Buckley and Dr. Hogshead agreed with the ratings provided by Dr. Cairns; but did not address Section 8.3 or fully utilize Chapters 15 or 16 to rate impairment to appellant's right upper or lower extremities. For this reason, the case will be remanded to OWCP for further development on the extent of impairment to appellant's right arm and right leg. After such development as deemed necessary, OWCP should issue an appropriate decision on the extent of his permanent impairment to his right leg and arm based on his accepted conditions.

CONCLUSION

The Board finds this case is not in posture for decision as to the extent of appellant's permanent impairment to his right arm or leg.

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for proceedings consistent with this decision of the Board.[13]

Issued: July 29, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

[13] Richard J. Daschbach, Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after May 16, 2014