United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
	)	**Docket No. 14-83**
and	)	**Issued: June 17, 2014**
U.S. POSTAL SERVICE, MAIN POST OFFICE, St. Louis, MO, 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
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 15, 2013 appellant filed a timely appeal from an August 13, 2013 merit 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 this case.

ISSUE

The issue is whether appellant sustained permanent impairment of her lower extremities, warranting a schedule award.

On appeal, appellant contends that an OWCP referral physician did not perform a thorough medical examination as he spent a good deal of the time talking to her and had her completing forms.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board with respect to appellant's schedule award claim for her upper extremities under File No. xxxxxx415.[2] In a June 22, 2006 decision, the Board affirmed OWCP's January 12, 2006 decision, finding that appellant did not establish permanent impairment to her arms. The facts and circumstances as set forth in the Board's prior decision are hereby incorporated by reference.[3]

In the instant claim, adjudicated under File No. xxxxxx411, OWCP accepted appellant's claim for aggravation of left tarsal tunnel syndrome due to her repetitive work duties as a mail handler. It authorized a left tarsal tunnel release which was performed on January 11, 2011 by Dr. William G. Gerlach, an attending podiatrist. By letter dated February 16, 2011, OWCP expanded its acceptance of appellant's claim to include aggravation of bilateral tarsal tunnel syndrome.

On March 12, 2011 appellant returned to light-duty work. OWCP authorized her right tarsal tunnel release which was performed on May 17, 2011 by Dr. Gerlach. On August 9, 2011 appellant returned to light-duty work. On August 22, 2011 she returned to regular-duty work.

On January 3, 2013 appellant filed a claim for a schedule award.

In a January 18, 2013 medical report, Dr. Gerlach noted appellant's complaints of pain, tingling, numbness and cramping in her right and left foot. On physical examination, he reported minimal scar formation from appellant's previous surgery. There was no erythema, edema or evidence of infection. Dr. Gerlach advised that there was no change in appellant's neurovascular status from her previous visit. In a February 15, 2013 report, he indicated that appellant presented to have new orthotics made. Dr. Gerlach advised that her diagnosis was pronation secondary to a decompensated foot varus deformity. On examination, he again found no change in appellant's neurovascular status from her previous visits. There was mid-stance pronation with resupination at the toe off and the feet abducted approximately five degrees. No early heel off was noted.

On April 1, 2013 Dr. Daniel O. Zimmerman, a Board-certified internist and an OWCP medical adviser, reviewed the medical record. He advised that there was no medical documentation after the operative interventions that allowed for any impairment rating to be processed using the instructions in chapter 6 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

Appellant was referred to Dr. Richard T. Katz, a Board-certified physiatrist, for a second opinion.

[2] Docket No. 06-858 (issued June 22, 2006).

[3] In File No. xxxxxx415 OWCP accepted that appellant, a mail handler, sustained employment-related right mild carpal tunnel syndrome and bilateral tendinitis of the wrists.

In a July 17, 2013 report, Dr. Katz reviewed the medical record, and a history of appellant's medical treatment, family and occupational background. He noted that she was cantankerous and belligerent when he asked her to complete a lower limb questionnaire. Dr. Katz also noted that nerve conduction studies performed before and after appellant's surgeries were not included in the materials sent to him. According to appellant they were lost. Dr. Katz noted her complaint of daily pain which she rated between 3 and 10 in severity and numbness and tingling in the entire foot bilaterally, including all toes. On neurological examination, he reported normal muscle strength in the hip flexors, abductors and adductors, knee extensors, tibialis anterior, extensor hallucis longus, peroneus longus and gluteus medius. Muscle stretch reflexes were 1+ and symmetrical at the biceps, triceps, brachioradialis, pronator teres, knee, ankle and hamstrings. Plantar responses were down-going bilaterally. A sensory examination was normal in the lower extremities to pinprick, vibration and position sense. Semmes Weinstein monofilaments on the noncalloused soles of the feet were 4.31. Gait and station were intact. Romberg and sharpened Romberg were negative. There was pronator drift. There were no movement abnormalities. Skilled motor activity was normal. Cerebellar function was intact. On examination of the foot and ankle, Dr. Katz reported bilateral tarsal tunnel scars. There was no swelling, warmth or redness. Range of motion measurements included 20 degrees of dorsiflexion, 50 degrees of plantar flexion, 30 degrees of inversion and 20 degrees of eversion. Anterior drawer and varus stress tests and heel alignment were normal. There were two toes visible from behind. The Achilles insertion was normal without swelling or tenderness. There was a normal longitudinal arch bilaterally. Palpation of the metatarsal heads and interdigital nerves was not painful. Dr. Katz determined that appellant reached maximum medical improvement on August 22, 2011, the date she returned to full-duty work. He advised that his clinical examination revealed no motor or sensory deficit on either side. Dr. Katz noted the reported diagnosis of exacerbation of bilateral tarsal tunnel syndrome. Appellant was also diagnosed with left plantar fasciitis which was not an OWCP claim. Regarding the rating of tarsal tunnel syndrome, Dr. Katz stated that nerve conduction studies were required to complete his impairment ratings and requested that they be forwarded to him for review, particularly since appellant had other nerve pain-related claims. She had neck, arm, hand, back and lower extremity pain in addition to her foot pain and numbness. On July 28, 2013 Dr. Katz stated that he was asked to rate appellant's tarsal tunnel syndrome even though the nerve conduction studies were lost.[4] He rated the condition under Table 16-12 on page 536 of the sixth edition of the A.M.A., *Guides* and found that she had no impairment as she had no objective sensory or motor deficits.

On August 6, 2013 Dr. Zimmerman reviewed the medical record and Dr. Katz's reports. He found that appellant reached maximum medical improvement on July 17, 2013. Dr. Zimmerman further found that Dr. Katz's zero percent impairment rating for each leg was acceptable based on the A.M.A., *Guides*.

In an August 13, 2013 decision, OWCP denied appellant's schedule award claim. It found that the weight of medical opinion from Drs. Katz and Zimmerman did not establish any employment-related impairment of a scheduled member.

[4] On July 18, 2013 OWCP stated that it found one electromyogram study referenced in Dr. Gerlach's May 21, 2010 report, but that it could not locate the actual test.

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 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]

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).[11] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12]

ANALYSIS

The Board finds this case is not in posture for decision regarding appellant's bilateral lower extremity impairment.

OWCP accepted that appellant sustained aggravation of bilateral tarsal tunnel syndrome while in the performance of duty. On January 11 and May 17, 2011 Dr. Gerlach, an attending physician, performed surgery for left and right tarsal tunnel release. Appellant claimed a schedule award due to her accepted condition. In an August 13, 2013 decision, OWCP denied her claim for a schedule award as the evidence was insufficient to establish that she sustained permanent impairment to a scheduled member.

In reports dated January 18 and February 15, 2013, Dr. Gerlach found that appellant had pronation secondary to decompensated foot varus deformity and that there was no change in her neurovascular status from her previous visits. However, he did not provide an impairment rating

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

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

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

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

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

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

[12] *Id.* at 521.

under the sixth edition of the A.M.A., *Guides*. Dr. Katz, an OWCP referral physician, reviewed the medical record and Dr. Gerlach's findings on July 17, 2013. He listed normal findings on neurological, sensory and physical examination of appellant's bilateral lower extremities and noted the accepted employment-related aggravation of bilateral tarsal tunnel syndrome. Dr. Katz also noted the reported diagnosis of left plantar fasciitis which was not part of an OWCP claim. He stated that nerve conduction studies missing from the record were necessary to complete his impairment rating evaluation. On July 28, 2013 Dr. Katz determined that appellant had no impairment to either lower extremity under Table 16-12 on page 536 of the sixth edition of the A.M.A., *Guides* because she had no objective sensory or motor deficits. He noted, however, that he rated her impairment without reviewing nerve conduction studies which he requested. The Board finds that Dr. Katz's impairment rating was not based on a complete record. The Board has held that medical reports must be based on a complete and accurate factual and medical background. Medical opinions based on an incomplete or inaccurate history are of limited probative value.[13] Absent the relevant diagnostic testing pertaining to appellant's bilateral lower extremity condition, which was acknowledged by OWCP on July 18, 2013, Dr. Katz's July 28, 2013 impairment rating is of diminished probative value.

The Board finds that further development of the medical evidence is warranted. Having undertaken development of the medical opinion evidence by referring appellant to a second opinion physician, OWCP had an obligation to do a complete job and obtain an evaluation that would resolve the issue involved in this case.[14] The Board will set aside OWCP's August 13, 2013 decision and remand the case for OWCP to request submission of the missing nerve conduction studies or obtain new studies from Dr. Katz. OWCP shall request that Dr. Katz determine the extent of any bilateral lower extremity impairment under the sixth edition of the A.M.A., *Guides*. After such further development as deemed necessary, it shall issue a *de novo* decision on appellant's claim for a schedule award.

CONCLUSION

The Board finds that the case is not in posture for decision regarding appellant's entitlement to a schedule award for her bilateral lower extremities.

[13] *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[14] *See Mae Z. Hackett*, 34 ECAB 1421 (1983).

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.[15]

Issued: June 17, 2014
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

[15] Richard J. Daschbach participated in the preparation of the decision but was no longer a member of the Board after May 16, 2014.