United States Department of Labor
Employees' Compensation Appeals Board

P.H., Appellant	)	
and	)	**Docket No. 13-1760 & 14-231**
	)	**Issued: May 7, 2014**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISRTATION MEDICAL CENTER, Murfreesboro, TN, 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 July 19, 2013 appellant filed a timely appeal from a January 31, 2013 decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule award, docketed as No. 13-1760. On October 7, 2013 she filed a timely appeal from an April 18, 2013 decision denying reimbursement for an imaging study, docketed as No. 14-231. 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.

ISSUES

The issues are: (1) whether appellant sustained ratable impairments of her upper extremities due to accepted cervical injuries; and (2) whether OWCP properly denied reimbursement for an abdominal imaging study.

[1] 5 U.S.C. § 8101 *et seq.*

On appeal, appellant contends that Dr. John Kendall Black, Jr., a Board-certified orthopedic surgeon and a second opinion physician, performed only a cursory examination and did not thoroughly review the findings of her attending physicians. She also contended that OWCP wrongly disregarded her attending physician's whole person impairment rating. Regarding the reimbursement issue, appellant contends that the imaging study was related to removal of an implanted pain pump authorized by OWCP to treat her accepted spinal injuries.

FACTUAL HISTORY

OWCP accepted that on August 1, 2006 appellant, then a 57-year-old nurse, sustained a lumbar sprain, lumbosacral neuritis, brachial neuritis, cervical disc degeneration, cervical stenosis at C4-5 and C5-6 and a herniated L5-S1 disc with myelopathy when she slipped and fell on a wet floor. It later accepted wound complications, neurologic complications, implant malfunction and cerebrospinal rhinorrhea due to authorized cervical and lumbar spine surgeries with implantation of an intrathecal pain pump.

On March 28, 2007 Dr. Rex E.H. Arendall II, an attending Board-certified neurosurgeon, performed partial anterior discectomies, fusion, plate fixation, decompression and bilateral anterior foraminotomies at C4, C5 and C6 with anterior cord decompression and bilateral anterior foraminotomies at C4-5 and C5-6. On March 4, 2008 he performed anterior partial discectomies, fusion, plate fixation and decompression at L5 and S1 with open reduction of an L5-S1 disc space collapse. On March 18, 2008 Dr. Arendall performed a posterolateral fusion from L4 to S1. OWCP approved these procedures.

On April 1, 2009 Dr. Arendall implanted an abdominal intrathecal pain pump with lumbar catheter. This was followed by surgical placement of a lumbar drain on April 8, 2009 to address a cerebrospinal fluid leak. OWCP approved these procedures. Dr. Arendall noted in reports dated January to October 2010 that appellant reported sedation and gastric side effects from the pump medication. He adjusted her dosage rate.[2]

On November 2, 2011 appellant claimed a schedule award. She submitted an August 13, 2011 report from Dr. Arendall with his annotations on the sixth edition of the American Medical Associations, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Arendall found 17 percent whole person impairment rating under Table 17-4 for appellant's lumbar condition and 11 percent whole person impairment under Table 17-2 for her cervical spine condition. He combined these to yield 26 percent whole person impairment. Dr. Arendall offered an alternative rating method in an October 13, 2011 report, finding a 26 percent impairment of each arm under Table 15-4 and Table 15-20 of the A.M.A., *Guides*[3] due to class 1 sensory and motor impairments. He found 26 percent impairment of each leg under Table 16-4 and Table 16-11.

[2] December 21, 2010 cervical and lumbar myelograms showed anterior extradural filling defects at C2-3, C3-4, C5-7, L1-2, L2-3, L3-4 and L4-5. Postmyelogram computed tomography (CT) scans showed disc bulges at L1-2, L3-4, L4-5, L3-4 and L4-5, with stenosis on the right at L3-4. X-rays showed C3-4 instability.

[3] Table 15-4, pages 398 to 400 of the sixth edition of the A.M.A., *Guides* is titled "Elbow Regional Grid: Upper Extremity Impairments." Table 15-20, page 434 of the sixth edition of the A.M.A., *Guides* is titled "Brachial Plexus Impairment-UEI."

In November 8 and 30, 2011 letters, OWCP advised appellant of the additional evidence needed to establish her claim. It requested her physician's opinion addressing ratable impairment of a scheduled body member based on the appropriate portions of the July/August 2009 *The Guides Newsletter*.

In a January 10, 2012 report, Dr. Arendall explained that the accepted herniated discs compressed nerve roots from C4 to C6 and L4 to S1, causing numbness and weakness in all extremities and bilaterally diminished biceps and ankle reflexes. He reiterated his prior impairment ratings.

On January 12, 2012 OWCP obtained a second opinion from Dr. David A. West, an osteopath Board-certified in orthopedic surgery, who reviewed the medical record and a statement of accepted facts. Dr. West diagnosed failed cervical and lumbar spine syndromes causing radiculopathy in all extremities. In a January 24, 2012 supplemental report, he offered an impairment rating of six percent to each leg according to Table 15-14 of the A.M.A., *Guides* and July/August 2009 *The Guides Newsletter*. In a February 1, 2012 report, Dr. H.P., Hogshead, an OWCP medical adviser, reviewed Dr. West's report. He found that Dr. West's ratings were incorrect. Dr. Hogshead applied Table 2 of the July/August 2009, *The Guides Newsletter* to Dr. West's findings to rate a 12 percent impairment of each leg.

On February 15, 2012 Dr. Arendall surgically removed the intrathecal pain pump, partially removed the lumbar catheter and ligated the remaining catheter segment.

By decision dated February 17, 2012, OWCP granted appellant schedule awards for 12 percent impairment of each lower extremity.[4]

On March 20, 2012 appellant claimed a schedule award for upper extremity impairment. In an April 2, 2012 letter, OWCP advised her of the additional evidence needed to establish her claim, including her physician's opinion confirming a ratable impairment based on the appropriate portions of the A.M.A., *Guides* and the July/August 2009 edition of *The Guides Newsletter*.

Dr. Arendall referred appellant for a CT scan of the abdomen and pelvis to evaluate an infected postoperative seroma. An April 25, 2012 ultrasound scan showed a superficial seroma fluid collection at the pump site. An April 27, 2012 CT scan of the abdomen and pelvis showed fluid collection in the subcutaneous tissues along the left "anterior abdominal wall likely representing an abscess at the site of prior device placement." On May 3, 2012 appellant underwent extraction of serous fluid from the pain pump site. She submitted the imaging study documentation to OWCP for reimbursement.

On June 11, 2012 OWCP obtained a second opinion from Dr. Black, a Board-certified orthopedic surgeon, who reviewed the medical record and statement of accepted facts. Dr. Black performed a clinical examination noting limited cervical motion and subjective paresthesias in both arms. He opined that a May 21, 2012 nerve conduction velocity (NCV) and

[4] OWCP divided the payment schedule into two periods, from January 13 to March 1, 2012 and from May 5, 2012 to August 11, 2013.

electromyography (EMG) studies obtained as part of the second opinion examination showed no evidence of acute or chronic upper extremity radiculopathy, no polyneuropathy and no focal median, ulnar, peroneal, tibial or sciatic neuropathy.[5] Dr. Black explained that appellant had no impairment of the upper extremities originating in the spine as there was no evidence of radiculopathy. Dr. Hogshead concurred with Dr. Black's rating.

On June 28, 2012 OWCP received a copy of proposed Table 1 and Table 2 from the July/August 2009, *The Guides Newsletter*. The evidence does not reflect who authored the unsigned document. On Proposed Table 1, Spinal Nerve Impairments Upper Extremity Impairments, the equation "4+9=13" is written in the boxes for C5 and C6, totaling 26 percent upper extremity impairment. On Proposed Table 2, Spinal Nerve Impairment: Lower Extremity Impairments, 26 percent impairment is indicated for each leg due to L5 and S1 nerve root impairment.

In a July 12, 2012 decision, OWCP denied appellant's schedule award claim for the upper extremities. It accorded the weight of the medical evidence to Dr. Black, who explained that objective electrodiagnostic studies did not support any impairment of the extremities originating in the spine.

Appellant requested a telephonic hearing that was held on November 16, 2012. At the hearing, she asserted that the electrodiagnostic studies documented nerve damage in both arms. Appellant also argued that the electrodiagnostic studies and Dr. Black's examination were not performed in a competent manner. She described continued pain, weakness and paresthesias throughout both arms and hands. After the hearing, appellant submitted November 29 and December 5, 2012 reports from Dr. Arendall finding unchanged neck and upper extremity pain and paresthesias. Dr. Arendall reiterated his August 13, 2011 impairment rating. On August 23 and September 13, 2012 he noted left lower quadrant abdominal pain with fluid collection at the pump site.

In a January 31, 2013 decision, an OWCP hearing representative affirmed the July 12, 2012 decision, finding that the evidence submitted did not establish a ratable impairment of either upper extremity and was insufficient to outweigh Dr. Black's opinion.

In a March 13, 2013 letter, OWCP advised appellant of the additional evidence needed to establish her claim for reimbursement of the abdominal imaging study, including a statement from her attending physician explaining how and why the study was related to her accepted injuries. In response, appellant submitted a May 23, 2012 chart note from Dr. Son D. Le, an attending Board-certified physiatrist, who noted that he did not evaluate her as she left prior to being examined.

[5] A May 21, 2012 EMG and NCV study of both upper and lower extremities ordered by OWCP showed no evidence of cervical or lumbar radiculopathy, polyneuropathy, focal median or ulnar neuropathy, "peroneal, tibial or sciatic neuropathy, myopathy, lumbosacral plexopathy or brachial plexopathy involving the extremities." There were findings of "old previous denervation findings with subsequent reinervation" consistent with multiple spine surgeries.

By decision dated April 18, 2013, OWCP denied appellant's claim for reimbursement of the April 27, 2012 abdominal imaging study. It found that the medical evidence did not support that the procedure was medically necessary or related her accepted conditions.

LEGAL PRECEDENT -- ISSUE 1

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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[8]

No schedule award is payable for a member, function or organ of the body not specified in FECA or in the regulations.[9] Because neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back,[10] no claimant is entitled to such an award.[11] However, in 1966, amendments to FECA modified the schedule award provision to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. As the schedule award provision of FECA includes the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.[12]

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures indicate that *The Guides Newsletter* "Rating Spinal Nerve Extremity Impairment Using the Sixth Edition" (July/August 2009) is to be applied.[13]

---

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id*.; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[9] *Henry B. Floyd, III*, 52 ECAB 220 (2001).

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

[11] *Thomas Martinez*, 54 ECAB 623 (2003).

[12] *See Thomas J. Engelhart*, 50 ECAB 319 (1999).

[13] *See G.N.*, Docket No. 10-850 (issued November 12, 2010); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1, n.5 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a lumbar sprain, lumbosacral and brachial neuritis, cervical disc degeneration, cervical stenosis at C4-5 and C5-6 and a herniated L5-S1 disc with myelopathy, surgical complications, implant malfunction and cerebrospinal rhinorrhea. Appellant claimed a schedule award on November 2, 2011.

Appellant contended that the accepted cervical spine injuries caused a ratable permanent impairment of both arms. Although FECA does not provide for a schedule award for the back or spine, impairment of the extremities due to a spinal injury may be compensable.[14] The Board finds that appellant did not submit sufficient medical evidence to establish a ratable impairment of either upper extremity due to the accepted cervical spinal injuries.

Dr. Arendall, an attending physician, provided an August 13, 2011 report in which he rated 26 percent whole person impairment due to the lumbar and cervical conditions. This is insufficient to establish ratable permanent impairment as whole person impairment is not permitted under FECA.[15] In an October 13, 2011 report, Dr. Arendall found 26 percent impairment of each arm under Table 15-4 and Table 15-20 of the A.M.A., *Guides*[16] due to class 1 sensory and motor impairments. This report is insufficient to establish ratable impairment as he did not clearly address how he calculated impairment under the A.M.A., *Guides* or why the impairment was not more properly rated under *The Guides Newsletter*. Dr. Arendall did not explain how he determined any grade modifiers for the diagnosed conditions.[17] Thus, his rating is of diminished probative value. On June 28, 2012 OWCP received an undated rating under proposed Table 1 and Table 2 from the July/August 2009, *The Guides Newsletter*. There is no indication of who authored the unsigned document. The Board has held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8102(2).[18] Thus, this document is of no probative medical value with regard to appellant's impairment.

Dr. Black, a Board-certified orthopedic surgeon and second opinion physician, examined appellant and found that she had no ratable impairment of either arm. The May 21, 2012 EMG and NCV studies did not establish any neuropathy or radiculopathy unto the upper extremities. After reviewing the medical record, statement of accepted facts and performing a thorough clinical examination, Dr. Black explained in detail that appellant had no objective evidence of a neurologic condition originating in the spine affecting either arm. Dr. Hogshead concurred with

[14] *See Thomas J. Engelhart*, *supra* note 12.

[15] *B.P.*, Docket No. 08-1457 (issued February 2, 2009).

[16] Table 15-4, pages 398 to 400 of the sixth edition of the A.M.A., *Guides* is titled "Elbow Regional Grid: Upper Extremity Impairments." Table 15-20, page 434 of the sixth edition of the A.M.A., *Guides* is titled "Brachial Plexus Impairment-UEI."

[17] *See I.F.*, Docket No. 08-2321 (issued May 21, 2009) (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 diminished probative value in determining the extent of permanent impairment).

[18] *R.M.*, 59 ECAB 690 (2008).

Dr. Black's assessment. OWCP issued its July 12, 2012 and January 31, 2013 decisions denying a schedule award for the upper extremities based on Dr. Black's opinion as the weight of the medical evidence. The Board finds that OWCP properly accorded Dr. Black the weight of the medical evidence. His reports clearly explain why appellant had no objective evidence of a neurologic condition originating in the spine affecting either arm.[19]

The Board finds that the weight of the medical evidence does not establish a ratable impairment of the upper extremities due to appellant's accepted conditions.

On appeal, appellant contends that Dr. Black performed only a cursory examination and did not thoroughly review the findings of her attending physicians. As noted, Dr. Black's report explained that she had no ratable impairment of either upper extremity based on the lack of objective radiculopathy or neuropathy by diagnostic testing. His opinion was based on the complete medical record and a statement of accepted facts. Appellant also contends that OWCP wrongfully disregarded Dr. Arendall's whole person impairment rating. However, FECA does not authorize schedule awards for impairment of the "whole person."[20]

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

Section 8103 of FECA[21] provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.[22] In interpreting section 8103, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. The only limitation on OWCP's authority is that of reasonableness.[23] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[24]

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the

[19] *S.S.*, Docket No. 13-2044 (issued February 20, 2014).

[20] *See supra* note 15; *D.H.*, 58 ECAB 358 (2007).

[21] 5 U.S.C. §§ 8101-8193.

[22] *Id*. at § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

[23] *Mira R. Adams*, 48 ECAB 504 (1997).

[24] *Daniel J. Perea*, 42 ECAB 214 (1990).

effects of an employment-related injury or condition.[25] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[26] Therefore, in order to prove that the medical services were warranted, appellant must submit evidence to show that those services were for a condition causally related to the employment injury and that the services were medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.[27]

ANALYSIS -- ISSUE 2

OWCP accepted that appellant sustained cervical and lumbar spinal injuries. It later authorized implantation of an intrathecal pain pump to treat the effects of the accepted injuries. Dr. Arendall implanted the pump on April 1, 2009. Appellant had gastric and neurologic side effects leading him to remove the pump on February 15, 2012. She subsequently developed left lower quadrant pain and distention at the former pump site. Dr. Arendall referred appellant for an abdominal CT scan, performed on April 27, 2012. The CT scan revealed a postsurgical seroma, requiring fluid extraction. Appellant requested reimbursement for the April 27, 2012 CT scan. OWCP denied payment for this study by April 18, 2013 decision. It is appellant's burden of proof to establish that OWCP abused its discretion by denying reimbursement.

In its March 13, 2013 letter, OWCP explained to appellant that she needed to submit a statement from her attending physician addressing how the accepted injuries necessitated the abdominal CT scan. However, appellant did not submit such evidence. She submitted a May 23, 2012 note from Dr. Le, an attending Board-certified physiatrist, but he did not examine her. Appellant also provided Dr. Arendall's reports diagnosing a postoperative seroma at the former pump site. However, Dr. Arendall did not provide a report explaining why the authorized pain pump or its removal, necessitated the April 27, 2012 abdominal CT scan. Therefore, his opinion is insufficient to meet appellant's burden of proof.[28]

As appellant failed to submit supporting medical evidence, the Board finds that OWCP acted within its discretion in denying reimbursement of the April 27, 2012 abdominal imaging scan.[29] 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.

[25] *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

[26] *Id.*

[27] *R.L.*, Docket No. 08-855 (issued October 6, 2008).

[28] *Id.*

[29] *G.A.*, Docket No.09-2153 (issued June 10, 2010).

CONCLUSION

The Board finds that appellant has not established that she sustained a ratable impairment of either upper extremity causally related to her accepted injuries. The Board further finds that OWCP properly denied reimbursement of the April 27, 2012 abdominal imaging study.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 18 and January 31, 2013 are affirmed.

Issued: May 7, 2014
Washington, DC

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

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

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