United States Department of Labor
Employees' Compensation Appeals Board

C.F., Appellant	)	
and	)	**Docket No. 14-427**
	)	**Issued: November 25, 2014**
SOCIAL SECURITY ADMINISTRATION, Atlanta, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 13, 2013 appellant, through counsel, timely appealed a November 1, 2013 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 the schedule award appeal.[2]

ISSUE

The issue is whether appellant has a ratable impairment of the upper or lower extremities due to his employment-related cervical and lumbar conditions.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record on appeal contains evidence received after OWCP issued its November 1, 2013 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

Appellant, a 45-year-old claims representative, has an accepted claim for dislocation of cervical and lumbar vertebrae, which occurred on November 28, 2005 when he slipped and fell on a wet marble floor. He was treated by Dr. Lena Kart, a chiropractor, for intermittent disability. Appellant was also treated by Dr. Kamal Kabakibou, a specialist in pain management, for complaints of low back pain. Dr. Kabakibou noted that magnetic resonance imaging (MRI) scan testing of the lumbar region did not show any herniated disc disease. He recommended continued adjustive treatment by Dr. Kart and released appellant back to work at full duty as of February 6, 2006.

In March 2007, appellant was seen by Dr. Kabakibou and prescribed physical therapy. On April 27, 2007 Dr. Kabakibou noted that appellant had low back and myofascial pain with mid back pain of uncertain etiology. He noted that appellant underwent diagnostic testing of the disc and nerves which revealed no degeneration or dislocation. Appellant received physical therapy and returned to work at modified duty, receiving compensation for intermittent disability.[3]

On November 14, 2012 appellant filed a claim for a schedule award (Form CA-7).

On December 6, 2012 OWCP referred appellant to Dr. Raju M. Vanapalli, a Board-certified orthopedic surgeon, for a second opinion examination. On January 8, 2013 Dr. Vanapalli reviewed appellant's history of injury and medical treatment. He noted that the primary complaint was of lower back and left hip pain, aggravated by sitting. Appellant rated his pain as 4 on a scale of 1 to 10. Dr. Vanapalli reported that appellant was currently working his regular job without restrictions. Physical examination of the cervical spine revealed no deformity or tenderness and there was no radiating pain to the upper extremities. Dr. Vanapalli also noted full range of motion in the cervical spine. Examination of the upper extremities revealed good motor power. Also, sensation was intact in all dermatomes. Upper extremity reflexes were 2+ bilaterally throughout all muscle groups (biceps, triceps and brachioradialis). Examination of the dorsal lumbar and lumbosacral spines revealed no deformity. Appellant's pain was mostly over the left gluteal region and more specifically the trochanteric area. Dr. Vanapalli noted tenderness in the area on deep palpation. He further noted that the pain did not radiate into the lower extremities past the trochanteric region. Neurological examination of the lower extremities was within normal limits. There was no sphincter dysfunction and pedal pulses were 2+.

Dr. Vanapalli did not conduct any diagnostic tests because he did not believe it necessary. His impression was low back pain and left gluteal region pain. Dr. Vanapalli found that appellant currently had no dislocations of any cervical or lumbar vertebrae and that the accepted conditions had resolved without residuals. Appellant continued to experience pain in the left trochanteric region, which worsened with prolonged sitting. Dr. Vanapalli noted that appellant had returned to his date-of-injury job without restrictions. He found that appellant had reached

[3] A November 23, 2010 MRI scan of the lumbar spine revealed the vertebral body heights were well-maintained and alignment was appropriate with no subluxation evident. There was mild facet arthropathy at L4-5 and L5-S1, with a minor bulge versus protrusion at L5-S1.

maximum medical improvement and there was no permanent partial impairment as his symptoms had resolved.

By decision dated April 5, 2013, OWCP denied appellant's claim for a schedule award based on Dr. Vanapalli's January 8, 2013 opinion.

Appellant requested a hearing, which was held on August 13, 2013.

OWCP received treatment records dated April 15 to October 13, 2013 from Dr. Kabakibou. Appellant was seen for a lumbar sprain and strain and lumbosacral spondylosis; however, Dr. Kabakibou did not address permanent impairment or provide an impairment rating.

In a decision dated November 1, 2013, an OWCP hearing representative affirmed OWCP's April 5, 2013 decision. She found that the weight of medical opinion was represented by Dr. Vanapalli and did not establish any permanent impairment to appellant's extremities based on his cervical or lumbar conditions.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[4] 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 under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the appropriate standard for evaluating schedule losses.[5] Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).[6]

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or in the implementing regulations.[7] The list of schedule members includes the eye, arm, hand, fingers, leg, foot, and toes.[8] Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.[9] By authority granted under FECA, the

[4] For a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2) and for total loss of use of an arm, an employee shall receive 312 weeks' compensation. *Id.* at § 8107(c)(1).

[5] 20 C.F.R. § 10.404.

[6] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (February 2013).

[7] *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

[8] 5 U.S.C. § 8107(c).

[9] *Id.*

Secretary of Labor expanded the list of schedule members to include the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix, and vulva/vagina and skin.[10]

Neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back, spine or the body as a whole.[11] A schedule award is permissible where an employment-related spinal condition affects the upper or lower extremities.[12] The sixth edition of the A.M.A., *Guides* provides a specific methodology for rating spinal nerve extremity impairment.[13] It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine. FECA-approved methodology is premised on evidence of radiculopathy affecting the upper or lower extremities. The appropriate tables for rating spinal nerve extremity impairment are incorporated in FECA procedure manual.[14]

ANALYSIS

Appellant's claim was accepted by OWCP for dislocation of cervical and lumbar vertebrae. He claimed a schedule award under FECA.[15] Dr. Kabakibou, appellant's attending pain management specialist, did not provide an impairment rating with respect to his cervical or low back conditions. He did not address permanent impairment or state whether appellant was at maximum medical improvement. OWCP, therefore, referred appellant to Dr. Vanapalli for further evaluation regarding his claim for a schedule award.

Dr. Vanapalli examined appellant on January 8, 2013. He provided an accurate review of the accepted employment injury, statement of accepted facts and the accepted dislocations of lumbar and cervical vertebrae. Dr. Vanapalli noted appellant's chief complaint of low back and left hip pain, aggravated by sitting. On examination of the cervical spine, he found no deformity, tenderness or radiating pain into the upper extremities. There was a full range of motion of the cervical spine. The upper extremities and shoulders showed good power present, sensations in all dermatomes and equal reflexes of the biceps, triceps and brachioradialis. The lumbar spine showed no deformity. Appellant complained of pain over the trochanteric area on deep palpation, but it did not radiate into the lower extremities past this region. Neurological examination of the lower extremities was within normal limits. Dr. Vanapalli noted that prior MRI scan testing of appellant's lumbar spine was normal after the injury, with evidence of a bulging disc and facet joint arthrosis after November 20, 2010. He noted that the medical records attributed appellant's degenerative disease of the lumbar spine to obesity. Dr. Vanapalli found that appellant was at maximum medical improvement with no permanent impairment to

[10] *Id.* at § 8107(c)(22); 20 C.F.R. § 10.404(b).

[11] *Supra* note 8; *id.* at § 10.404(a); *see Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

[12] *Supra* note 6 at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a(3).

[13] The methodology and applicable tables were initially published in *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009).

[14] *Supra* note 6 at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4.

[15] 20 C.F.R. § 10.115(f).

the upper or lower extremities based on the accepted conditions, which he noted had resolved. He noted that appellant had resumed his regular employment with no restrictions.

The Board finds that the weight of medical opinion is represented by the well-rationalized report of Dr. Vanapalli, the second opinion examiner, who reviewed an accurate history of the employment injury and accepted conditions. Dr. Vanapalli reviewed the treatment records and diagnostic tests obtained of the lumbar spine. He advised that appellant complained of pain, primarily in the trochanteric region that was not radiating into the lower extremities. Neurological examination was within normal limits. Dr. Vanapalli's examination found that appellant had no cervical complaints or radiculopathy from the cervical region into the upper extremities. Based on his report, OWCP properly determined that appellant did not establish permanent impairment to any extremity based on his accepted cervical or lumbar conditions.

On appeal, counsel argued that FECA-approved methodology for rating spinal nerve impairment to the extremities was "junk science." The Board has previously considered this contention.[16] As noted, the Board has determined that OWCP properly exercised its authority when implementing the current methodology for rating spinal nerve extremity impairment under the A.M.A., *Guides* (6th ed. 2008).

CONCLUSION

The Board finds that appellant has not established that he sustained permanent impairment of any extremity due to his accepted conditions.

[16] *See D.S.*, Docket No. 14-12 (issued March 18, 2014); *D.S.*, Docket No. 13-2011 (issued February 18, 2014).

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 25, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board