

**United States Department of Labor
Employees' Compensation Appeals Board**

K.B., Appellant

and

**U.S. POSTAL SERVICE, FOX CREEK
STATION, Detroit, MI, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 14-1454
Issued: October 2, 2014**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 9, 2014 appellant, through her attorney, filed a timely appeal from a December 17, 2013 schedule award decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 either lower extremity, warranting a schedule award.

FACTUAL HISTORY

This case has previously been before the Board with respect to appellant's recurrence of disability claim.² In a January 22, 2013 decision, the Board set aside OWCP's December 23,

¹ 5 U.S.C. § 8101 *et seq.*

² Docket No. 12-726 (issued January 22, 2013).

2011 decision and remanded the case for further development of the evidence to determine whether appellant developed a back injury and any resultant disability commencing February 14, 2011 causally related to her accepted January 25, 2011 employment-related injuries. Further, OWCP was to determine whether FECA Bulletin No. 09-05 applied based upon appellant's contention that the employing establishment withdrew her light-duty work. The facts of the case, as set forth in the prior decision, are incorporated by reference.³

By letter dated February 26, 2013, QTC Medical Services, Inc., the medical appointment scheduler for OWCP, notified appellant that she was scheduled for an appointment with Dr. Emmanuel N. Obianwu, a Board-certified orthopedic surgeon, for a second opinion. The examination was to determine the relationship between appellant's claimed conditions and her federal employment.

In a March 15, 2013 medical report, Dr. Obianwu reviewed a history of appellant's employment and the January 25, 2011 employment injuries, the statement of accepted facts and medical record. He obtained a history of her medical treatment and social background. Dr. Obianwu noted appellant's current complaints of pain in her lower back, buttocks, thighs and knees. On physical examination, he reported that she was able to walk on her toes and heels without difficulty. Appellant had 80 degrees of flexion of the thoracolumbar spine, 20 degrees of extension and lateral bending to either side of 15 degrees. Neither thigh was swollen. The circumference of the distal thighs, two-hand spreads above the superior pole of each patella was about 14-1/2 inches. There were no reflex changes in the lower extremities or paraspinal muscle spasm in the lumbar spine. The extensor hallucis longus muscle in each lower extremity had good strength. A straight leg raising test caused low back pain, but was negative for radicular problems. Log rolling the hips caused low back pain. There was some abnormal illness behavior with respect to the lower back, but nothing gross. Dr. Obianwu indicated that appellant moved around the room quite well. There were no sensory changes reported in the lower extremities. There was no atrophy of any of the muscle groups in the lower extremities. A Patrick's test for sacroiliac joint disease was negative bilaterally.

Dr. Obianwu diagnosed lumbar spondylosis, degenerative disc disease of the lumbar spine and left paracentral disc protrusion at L5-S1. He stated that a review of the medical records revealed that appellant had problems in her lower back for about 12 years. At that time, it was recalcitrant back pain and she required investigative procedures. Dr. Obianwu stated that it seemed the most reasonable consequence of the January 25, 2011 employment-related fall was an acute temporary aggravation of the problems in appellant's lower back. Based on his assessment, this temporary aggravation had resolved after about six months, in July or August 2011. Dr. Obianwu stated that his examination failed to reveal any findings that would suggest aggravation of the chronic lumbar disc disease first noted in 2002. Appellant did not have radiculopathy. There were no acute changes. Dr. Obianwu concluded that, if an opportunity arose at this time, appellant could return to her regular duties.

On May 23, 2013 an OWCP medical adviser reviewed the record and Dr. Obianwu's March 15, 2013 report. The medical adviser determined that appellant reached maximum

³ OWCP accepted that on January 25, 2011 appellant, then a 59-year-old letter carrier, sustained a bilateral hip and thigh contusion when she slipped and fell onto snow and ice while in the performance of duty.

medical improvement on March 15, 2013, the date of Dr. Obianwu's examination. He noted Dr. Obianwu's negative examination findings. Based on these findings, the medical adviser found that appellant had no permanent impairment to the lower extremities under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

By decision dated May 31, 2013, OWCP accepted appellant's claim for temporary aggravation of preexisting degenerative disc disease. It also accepted that she sustained a recurrence of disability from February 14 to July 30, 2011 due to her January 25, 2011 employment injuries. OWCP noted that appellant retired from the employing establishment on July 31, 2011.

In a separate decision dated May 31, 2013, OWCP denied appellant's schedule award claim. It found that the weight of the medical opinion from Dr. Obianwu and OWCP's medical adviser did not establish any employment-related impairment due to her low back condition.

In a June 5, 2013 letter, appellant, through her attorney, requested a telephone hearing with an OWCP hearing representative.

In a July 12, 2013 progress note, Dr. Shlomo S. Mandel, a Board-certified internist, stated that appellant was evaluated for low back pain that radiated to the left extremity. He conducted a 14-point review of systems which was negative except for the provided history. On physical examination, Dr. Mandel found no tenderness in the cervical and lumbar musculature, 5/5 strength for the deltoid, biceps, triceps, wrist extensors, abductor pollicis brevis, quadriceps, tibialis anterior, extensor hallucis longus and gastroc/soleus, normal bulk and tone, and supple and nontender calves. On neurological examination, he found grossly intact cranial nerves, 2+/2+ deep tendon reflexes of the biceps, triceps, patellar and ankle jerk. There were no abnormalities with heel or toe walking. Tandem gait was within normal limits. Romberg was negative. There was no evidence of a myelopathic gait pattern. Dr. Mandel advised that, based on appellant's presentation, it was possible that carrying mail contributed to degeneration, and that a disc protrusion may be related to the described incident.

In a December 17, 2013 decision, an OWCP hearing representative affirmed the May 31, 2013 schedule award denial. The hearing representative found that Dr. Obianwu's opinion was well rationalized and based on an accurate medical and factual background. It established that appellant had no permanent impairment of either leg.

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, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member,

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

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.⁶ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁷ Effective May 1, 2009, FECA adopted the sixth edition of the A.M.A., *Guides*⁸ as the appropriate edition for all awards issued after that date.⁹

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).¹⁰ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹¹

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.¹²

ANALYSIS

OWCP accepted that appellant sustained bilateral hip and thigh contusion and temporary aggravation of preexisting degenerative disc disease of the lumbar spine. Appellant claimed a schedule award due to her accepted conditions. OWCP denied her claim for a schedule award. The Board finds that appellant has not met her burden of proof to establish permanent impairment to either lower extremity due to her accepted conditions.¹³

The Board finds that the well-rationalized March 15, 2013 opinion of Dr. Obianwu, an OWCP referral physician, constitutes the weight of the medical evidence regarding appellant's lower extremity impairment. It does not establish that appellant is entitled to schedule award compensation for her lower extremities. Dr. Obianwu reported essentially normal physical examination findings with the exception of log rolling the hips which caused low back pain and

⁶ *Ausbon N. Johnson*, 50 ECAB 304 (1999).

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

⁸ A.M.A., *Guides* (6th ed. 2008).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

¹⁰ A.M.A., *Guides* 494-531.

¹¹ *Id.* at 521.

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010). See *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

¹³ An employee seeking a schedule award has the burden of proof to establish permanent impairment. See *Denise D. Cason*, 48 ECAB 530 (1997).

abnormal illness behavior regarding the low back, but nothing gross. He diagnosed lumbar spondylosis, degenerative disc disease of the lumbar spine and left paracentral disc protrusion at L5-S1. Dr. Obianwu found that appellant sustained an acute temporary aggravation of her lower back problems as a consequence of the January 25, 2011 employment injuries. He further found that the temporary aggravation resolved after six months, in July or August 2011. Dr. Obianwu provided medical rationale for his opinion by explaining that his examination failed to reveal any findings that would suggest aggravation of the chronic lumbar disc disease first noted in 2002. He also noted that appellant did not have radiculopathy and there were no acute changes.

On May 23, 2013 an OWCP medical adviser reviewed Dr. Obianwu's report.¹⁴ He determined that appellant reached maximum medical improvement on March 13, 2013. The medical adviser found that, based on Dr. Obianwu's negative examination findings, she had no impairment to the lower extremities under the sixth edition of the A.M.A., *Guides*.

Dr. Mandel's July 12, 2013 report listed findings on physical examination and found that carrying mail "possibly" contributed to appellant's degeneration and that her disc protrusion may be related to this work duty. The Board concludes that this report is not sufficiently rationalized to constitute the weight of the medical opinion evidence. Further Dr. Mandel did not provide any impairment rating of a scheduled member based on the A.M.A., *Guides*.

The Board finds that appellant has not shown that she is entitled to schedule award compensation for her lower extremities and thus she has not met her burden of proof.

Appellant may request a 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.

CONCLUSION

The Board finds that appellant failed to establish that she has any permanent impairment of either lower extremity, warranting a schedule award.

¹⁴ See *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 2, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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