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

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| **S.M., Appellant** | ) | |
| **and** | ) | **Docket No. 14-1052** |
| | ) | **Issued: September 4, 2014** |
| **U.S. POSTAL SERVICE, POST OFFICE, Redondo Beach, CA, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On April 3, 2014 appellant filed a timely appeal from the December 11, 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 this case.[2]

### ***ISSUE***

The issue is whether appellant has more than a one percent impairment of her left lower extremity causally related to her accepted employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). The Board therefore has no jurisdiction to review the January 30, 2014 medical report appellant submits on appeal.

## ***FACTUAL HISTORY***

On April 29, 2008 appellant, a 39-year-old letter carrier, sustained a traumatic injury in the performance of duty when she lifted a tray of mail into her postal truck. OWCP accepted her claim for a lumbosacral ligament sprain and left groin strain/sprain.

In 2012, appellant filed a claim for a schedule award. Dr. Charles F. Xeller, the attending Board-certified orthopedic surgeon, found that she was exquisitely tender in the left inguinal canal with no discrete lump. Left hip flexion was painful but full. All other findings were normal. "So, with regards to her hernia, apparently I consider that [appellant] has an inguinal strain." Clinical studies were normal; they did not show an inguinal hernia. Appellant had occasional mild discomfort that did not preclude most activities of daily living. She did have palpable pain and, at times, swelling.

Dr. Xeller diagnosed a left groin strain and left inguinal hernia. Using Table 6-10, page 122, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009), under the chapter entitled "The Digestive System," he evaluated a three percent impairment of the whole person due to a left inguinal hernia.

In an addendum report, Dr. Xeller clarified that appellant had no frank herniation but a rather significant inguinal strain with ongoing pain. Nonetheless, he reaffirmed that Table 6-10 of the A.M.A., *Guides*, relating to herniation, was the appropriate table for rating her impairment.

An OWCP medical adviser reviewed Dr. Xeller's impairment evaluation and recommended that the accepted left inguinal strain be considered equivalent to a left hip strain with palpatory findings, under Table 16-4, page 512 of the A.M.A., *Guides*. The default impairment value for such a diagnosis was one percent of the lower extremity. The medical adviser made no adjustment for functional history, a +1 adjustment for physical findings and a -1 adjustment for clinical studies, resulting in no net adjustment of the default impairment value.

On May 1, 2013 OWCP issued a schedule award for a one percent impairment of the left lower extremity.

Dr. Xeller advised in a May 13, 2013 report that he did not know how OWCP's medical adviser arrived at a one percent impairment rating. He stood by his three percent rating of the whole person for an inguinal hernia and noted that appellant found it hard to bend over and to reach and twist due to her groin pain.

Appellant requested reconsideration.

OWCP's medical adviser stood by his one percent rating in a September 27, 2013 report.

In a decision dated December 11, 2013, OWCP reviewed the merits of appellant's claim and denied an additional schedule award.

## ***LEGAL PRECEDENT***

The schedule award provision of FECA[3] and the implementing regulations[4] set forth the number of weeks of compensation payable for the loss or loss of use, of scheduled members, functions and organs of the body. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used to make such a determination is a matter that rests within the sound discretion of OWCP.[5]

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. OWCP has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

Diagnosis-based impairment is the primary method of evaluating the lower limb. Impairment is determined first by identifying the relevant diagnosis, then by selecting the class of the impairment (no objective problem, mild problem, moderate problem, severe problem, very severe problem approaching total function loss) and finally by adjusting the default rating up or down slightly for grade, which is based on modifiers or nonkey factors such as functional history, physical examination and clinical studies.[8]

No schedule award is payable, however, for a member, function or organ of the body not specified under FECA or in the regulations.[9] Because neither FECA nor the regulations authorize a schedule award for the permanent loss of use of the spine or back,[10] no claimant is entitled to such an award.[11]

## ***ANALYSIS***

OWCP accepted that appellant sustained a lumbosacral ligament sprain and a left groin strain/sprain when she lifted a tray of mail into her postal truck on April 29, 2008. Appellant later filed a claim for a schedule award. As such, the question is whether the accepted diagnoses

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[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

[6] 20 C.F.R. § 10.404; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010).

[8] A.M.A., *Guides* 497.

[9] *William Edwin Muir*, 27 ECAB 579 (1976).

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

[11] *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).

caused any permanent impairment to a member or function or organ of the body as specified in FECA or its implementing regulations.

The accepted lumbosacral ligament sprain is located in appellant's lower spine or back. As the Board noted, no schedule award is payable for the permanent loss of use of the spine or back because neither is a specified member, function or organ of the body. No claimant may receive such an award. Further, Dr. Xeller, the attending orthopedic surgeon, evaluated no impairment of the lower extremities resulting from the accepted lumbosacral ligament sprain.

As for the accepted left groin strain/sprain, Dr. Xeller evaluated a three percent whole person impairment using Table 6-10, page 122 of the A.M.A., *Guides*. Table 6-10 provides criteria for evaluating impairment due to abdominal herniation but OWCP did not accept appellant's claim for a hernia. A schedule award cannot be granted for a hernia because hernia is not listed in FECA or the regulations as a scheduled member or organ of the body. The terms of FECA are specific as to the method and amount of payment of compensation. Neither OWCP nor the Board has the authority to enlarge the terms of FECA or to make an award of benefits under terms other than those specified in the statute.[12]

Imaging studies revealed no inguinal hernia and Dr. Xeller clarified that what she actually had was a rather significant inguinal strain. In the absence of a protrusion or palpable defect in the supporting structures of the abdominal wall, it is unclear whether Table 6-10 can apply.

Lastly, Dr. Xeller evaluated an impairment of the "whole person." FECA does not authorize schedule awards for permanent impairment of the whole person.[13] Payment is authorized only for permanent impairment of specified members, organs or functions of the body, such as the upper and lower extremities, the hands and feet, the fingers and toes, hearing, vision, the eye, the lung, larynx and the kidney. Accordingly, Dr. Xeller's rating for the whole person provides no basis under the law for the payment of a schedule award.

Nonetheless, Dr. Xeller's findings may be compared with appropriate tables in the A.M.A., *Guides* to determine appellant's entitlement. Chapter 16 of the A.M.A., *Guides* provides criteria for determining impairment of the lower extremities, which are scheduled members of the body.[14] Table 16-4, the Hip Regional Grid, provides criteria for determining impairment due to various diagnoses of the hip area, from the articular cartilage of the acetabulum to the mid shaft of the femur.[15] It was OWCP's medical adviser's opinion that the accepted left groin strain/sprain condition was medically equivalent to a strain in the left hip region.

[12] *K.S.*, Docket No. 14-0133 (issued April 1, 2014) (no schedule award payable for hernia).

[13] *Ernest P. Govednick*, 27 ECAB 77 (1975).

[14] 5 U.S.C. § 8107(c)(2) (for the total loss of a lower extremity, as with amputation, an employee may receive up to 288 weeks of compensation).

[15] A.M.A., *Guides* 500.

The first step in determining an impairment rating is to choose the diagnosis that is most appropriate for the region being assessed.[16] OWCP medical adviser's opinion that the accepted left groin strain/sprain may be evaluated as a soft-tissue strain in the hip region under Table 16-4 appears reasonable under the circumstances. Dr. Xeller diagnosed a left groin strain in addition to a left inguinal hernia. He found that appellant had palpable pain and that left hip flexion was painful but full. Palpatory findings and the absence of motion deficits are sufficient to classify the accepted left groin strain as class 1 or mild, under Table 16-4. The default impairment value is one percent of the left lower extremity.

Appellant's occasional mild discomfort did not preclude most activities of daily living, but Dr. Xeller clarified that she did find it hard to bend over and to reach and twist due to her groin pain. In the absence of any need for assistive devices such as a cane or crutch, her functional history appears to be mild, warranting no adjustment of the default impairment value.[17]

If a grade modifier or nonkey factor was used for primary placement in the regional grid, it may not be used again in the impairment calculation.[18] This applies in appellant's case because palpatory findings and the absence of motion deficits placed her diagnosis in the mild category. Physical examination findings, therefore, may not be used again to adjust the default impairment value.

Dr. Xeller noted that imaging studies were normal. As they did not confirm a diagnosis or even mild pathology, they are indicative of no problem.[19] This normally adjusts the default impairment value slightly lower, but under Table 16-4, the default impairment value and the next milder value are the same: one percent of lower extremity. This represents appellant's final rating.

Accordingly, the Board finds that appellant has no more than a one percent impairment of her left lower extremity causally related to her accepted employment injury. The Board will therefore affirm the December 11, 2013 decision denying modification of her schedule award.

## ***CONCLUSION***

The Board finds that appellant has no more than a one percent impairment of her left lower extremity causally related to her accepted employment injury.

[16] *Id*. at 499.

[17] *Id*. at 516 (Table 16-6, Functional History Adjustment, Lower Extremities).

[18] *Id*. at 515-16.

[19] *Id*. at 519 (Table 16-8, Clinical Studies Adjustment, Lower Extremities).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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