United States Department of Labor
Employees' Compensation Appeals Board

K.S., Appellant	)	
and	)	
DEPARTMENT OF THE ARMY, MEDICAL COMMAND, Fort Shafter, HI, Employer	)	**Docket No. 15-0741** **Issued: August 10, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 13, 2015 appellant filed a timely appeal from a January 13, 2015 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 appellant's claim for a schedule award.

ISSUE

The issue is whether appellant met her burden of proof to establish a permanent impairment caused by her accepted employment injuries.

FACTUAL HISTORY

On September 30, 2010 appellant, worked as a 62-year-old information receptionist. She injured her lower back when she bent down to switch a cable for her keyboard and her computer

[1] 5 U.S.C. § 8101 *et seq.*

began to fall, causing her to jerk her back. Appellant stopped work on October 4, 2010. She later returned to modified duty. OWCP accepted the claim for lumbar sprain.

On October 4, 2010 Dr. Matthew Hine, Board-certified in occupational medicine, saw appellant for back pain. Appellant reported pain on palpation of the lower back, straight leg raising was negative for radicular signs, and the legs had normal motor sensory and reflex testing. Dr. Hine diagnosed a lumbar sprain.

A January 22, 2011 magnetic resonance imaging (MRI) scan revealed an L2 compression fracture. Appellant underwent an L5-S1 epidural injection on April 18, 2011, a left sacroiliac joint injection on April 25, 2011, and a second epidural injection at the L5-S1 level on August 8, 2011. She was also treated with a transcutaneous electrical nerve stimulation unit.

In a February 3, 2011 report, Dr. Carl Hodel, Board-certified in emergency medicine and an associate of Dr. Hine diagnosed lumbar dysfunction; sacroiliac dysfunction; anterior torque right ilia; mild to moderate acute L2 compression fracture; spinal stenosis at L3-4, L4-5; lumbar myalgia, and hip flexor contracture. Dr. Hodel kept appellant on modified duty. He and associates continued to treat appellant and note her status.

Dr. Tetsuto Numata, a Board-certified orthopedic surgeon and an OWCP referral physician, examined appellant on February 7, 2012. In a March 27, 2012 report, he listed findings that included a normal sensory and motor examination. Dr. Numata diagnosed L2 compression fracture due to work injury; preexisting lumbar degenerative spondylosis; and preexisting degenerative spinal stenosis at L3-4 and L4-5. He opined that the compression fracture remained symptomatic but advised that she could work sedentary to light duty.

A November 15, 2012 MRI scan read by Dr. Matthew I. Yuh, a Board-certified diagnostic radiologist, revealed: chronic mild L2 anterior compression fracture; no acute compression fractures; mild degenerative lumbar disc disease. No level of severe central canal stenosis.

In a July 12, 2013 report, Dr. Hodel assessed closed lumbar vertebra fracture without spinal cord injury, lumbar spinal stenosis, and pelvic cross syndrome. He reported that appellant was stable and stationary for rating purposes.

On July 12, 2013 appellant filed a Form CA7 claim for a schedule award.

On September 4, 2013 OWCP referred appellant for a second opinion, along with the statement of accepted facts, a set of questions and the medical record, to Dr. Neelesh B. Fernandes, a Board-certified physiatrist, to determine any permanent impairment.

In an October 1, 2013 report, Dr. Fernandes noted appellant's history of injury and treatment and examined appellant. On examination, he found light touch sensation grossly intact in both legs. Manual muscle testing was also normal throughout the legs. Patrick's test was negative bilaterally. Dr. Fernandes diagnosed L2 vertebra compression fracture with 25 percent loss of height anteriorly. In rating impairment, he utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6th ed. 2009) (A.M.A., *Guides*). Dr. Fernandes advised that there were no sensory or motor deficits noted in the bilateral lower

extremities. Because of this, and because the back could not be rated, the lower extremity impairment rating was zero percent pursuant to the A.M.A., *Guides.*

On February 10, 2014 an OWCP medical adviser reviewed the medical record and confirmed that appellant had a zero percent impairment of each leg.

By decision dated April 15, 2014, OWCP denied appellant's claim for a schedule award.

On April 23, 2014 appellant requested a hearing. She reported that her back strain had not gone away.

In an October 1, 2014 decision, an OWCP hearing representative found that the case was not in posture for a hearing. She explained that OWCP did not allow appellant's physician an opportunity to provide an impairment rating before it referred appellant to Dr. Fernandes. The hearing representative also found that OWCP should accept the condition of L2 compression fracture. She remanded the case for OWCP to issue a development letter to Dr. Hodel asking that he provide an impairment rating under *The Guides Newsletter*, July/August 2009. The hearing representative directed that any impairment report from Dr. Hodel should be reviewed by an OWCP medical adviser. If no response was received within the allowed timeframe, OWCP should issue a *de novo* decision based on the medical evidence of record.

On November 13, 2014 OWCP expanded the claim to include: closed fracture of the lumbar vertebra at L2 without spinal cord injury.

In a separate letter also dated November 13, 2014, OWCP requested that Dr. Hodel, provide, within 30 days, an opinion on impairment based upon the A.M.A., *Guides*.

In a November 21, 2014 report, Dr. Hodel opined that appellant was stable and stationary and ready for rating. She continued to have pain in her back and would require further medication for pain and other therapy.

In a letter dated December 8, 2014, OWCP informed appellant and her physician that Dr. Hodel's November 21, 2014 report indicated that she had reached maximum medical improvement, but he did not indicate whether he would issue an impairment rating. It explained that, if the physician was unable or unwilling to provide an impairment rating report, appellant should advise OWCP in writing. A copy of the October 1, 2013 impairment rating provided by the second opinion physician, Dr. Fernandes was provided for Dr. Hodel's review and comment.

Dr. Hodel provided a December 19, 2014 status report, but this report did not include an impairment rating.

By decision dated January 13, 2015, OWCP denied appellant's claim for a schedule award. It found that the medical evidence of record did not support a permanent impairment to a scheduled member or function of the body.

LEGAL PRECEDENT

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proof to establish that the condition for which a schedule award is sought is causally related to his or her employment.[2]

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.[3] 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.[4] The A.M.A., *Guides* has been adopted by the implementing regulations 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*.[6]

Although the A.M.A., *Guide*s includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under FECA for injury to the spine.[7] In 1960, amendments to FECA modified the schedule award provisions 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. Therefore, as the schedule award provisions of FECA include 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.[8]

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter*, July/August 2009, offers an approach to rating spinal nerve impairments consistent with sixth edition

[2] *Veronica Williams*, 56 ECAB 367 (2005).

[3] 5 U.S.C. § 8107.

[4] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[5] 20 C.F.R. § 10.404.

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010); *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

[7] *Pamela J. Darling*, 49 ECAB 286 (1998).

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

methodology.[9] OWCP has adopted this approach for rating impairment to the upper or lower extremities caused by a spinal injury.[10]

ANALYSIS

The evidence of record is insufficient to establish that appellant is eligible for a schedule award in accordance with the sixth edition of the A.M.A., *Guides*. OWCP accepted her claim for sprain of her back, lumbar region, and closed fracture of the lumbar vertebra at L2 without spinal cord injury.

Appellant claimed a schedule award on July 12, 2013. However, she did not submit any evidence from a physician finding that she had permanent impairment of a scheduled body member, caused or aggravated by her accepted conditions, and which followed the A.M.A., *Guides* or *The Guides Newsletter* in rating permanent impairment. In a letter dated December 8, 2014, OWCP informed appellant and her physician that while he indicated that she was permanent and stationary, he did not provide an impairment rating. It provided appellant and the physician with a copy of the October 1, 2013 report, from Dr. Fernandes, the second opinion physician, and requested that Dr. Hodel review the report and comment on it. Dr. Hodel did not provide an opinion on impairment.

The Board finds that in his October 1, 2013 report, Dr. Fernandes described his examination, history of injury, and treatment. Dr. Fernandes utilized the A.M.A., *Guides* and found no sensory or motor deficits in the bilateral lower extremities. The medical evidence fails to establish a ratable impairment. On February 10, 2014 an OWCP medical adviser reviewed the medical evidence and concurred that appellant had no ratable impairment of either leg pursuant to the A.M.A., *Guides*.

Appellant has not submitted any medical evidence to support a schedule award under the sixth edition of the A.M.A, *Guides*, or *The Guides Newsletter*, under FECA.

On appeal, appellant argues that she is in constant pain and should receive some type of compensation. She has the burden to submit medical opinion evidence from Dr. Hodel or any other physician establishing permanent impairment. 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish permanent impairment caused by her accepted employment injuries.

[9] *L.J.*, Docket No. 10-1263 (issued March 3, 2011).

[10] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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