United States Department of Labor
Employees' Compensation Appeals Board

G.J., Appellant	)	
and	)	**Docket No. 15-1103**
	)	**Issued: October 14, 2015**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Grand Prairie, TX, Employer	)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 20, 2015 appellant filed a timely appeal from an April 6, 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish more than 25 percent permanent impairment of the left leg for which he previously received schedule awards.

On appeal appellant asserts that he has an additional 20 percent impairment, based on the opinion of an OWCP medical adviser who opined that he had 25 percent permanent impairment.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On April 12, 2006 appellant, then a 42-year-old prison lieutenant, filed a traumatic injury claim alleging that on the previous day he fractured his left leg subduing an inmate who was assaulting a staff member.[2] He stopped work that day, and the claim was accepted for closed fracture of the left tibia/fibula and left leg contusion. Appellant received continuation of pay and compensation, and returned to temporary duty in May 2006 and to full duty on August 3, 2006.

On October 24, 2006 appellant was granted a schedule award for 20 percent permanent impairment of the left leg.

Appellant transferred to another employing establishment facility as a contracting officer. On May 24, 2011 he filed a traumatic injury claim alleging that he injured his left lower leg on May 20, 2011 when he tripped on a curb.[3] On July 14, 2011 OWCP accepted contusion of the left lower leg and expanded the claim to include reflex sympathetic dystrophy (RSD) of the left lower leg,[4] unspecified left knee and leg sprain, and traumatic compartment syndrome of the left lower leg. Appellant thereafter received intermittent compensation for medical appointments and therapy.

Dr. Christopher Wong, a Board-certified orthopedic surgeon, performed a decompression procedure of appellant's left lower leg on January 24, 2013. He returned to modified duty on April 25, 2013.

On November 5, 2013 appellant filed a new schedule award claim. He submitted an October 30, 2013 report in which Dr. Christine Huynh, a Board-certified physiatrist, identified four criteria to be used in assessing impairment due to CRPS. Dr. Huynh advised that under Table 16-15 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides* hereinafter)[5] appellant had a diagnosis of CRPS, a class 1 impairment. She found modifiers of grade 1 for functional history, physical examination, and clinical studies and, after applying the net adjustment formula, advised that appellant had a zero adjustment. Dr. Huynh concluded that appellant had seven percent whole person impairment under Table 16-15.

In a November 14, 2013 report, Dr. Ronald Blum, an OWCP medical adviser, Board-certified in orthopedic surgery, noted his review of the record, including Dr. Huynh's report. He agreed with her conclusions and further noted that, under file number xxxxxx132, appellant had previously received a schedule award for 20 percent permanent impairment of the left leg. Dr. Blum combined the 7 percent current permanent impairment with the 20 percent previously awarded, using the Combined Values Chart, page 604 A.M.A., *Guides*, and

[2] At this time appellant was employed at a federal prison in Seagoville, TX. The April 11, 2006 injury was adjudicated by OWCP under file number xxxxxx132.

[3] The May 20, 2011 injury was adjudicated by OWCP under file number xxxxxx940.

[4] RSD is now known as complex regional pain syndrome (CRPS).

[5] A.M.A., *Guides* (6th ed. 2009).

concluded that appellant had a total left leg of 25 percent. The medical adviser then subtracted the 20 percent previously awarded and concluded that appellant should be compensated for an additional 5 percent permanent impairment.

On November 22, 2013 appellant was granted a schedule award for an additional five percent permanent left lower extremity impairment, for a total of 14.4 weeks, to run from June 3 to September 11, 2013.

Appellant timely requested a hearing before an OWCP hearing representative. He submitted additional medical evidence including a number of treatment notes from Dr. Wong and physical therapy reports. At the hearing, held on June 9, 2014, appellant maintained that he was entitled to a greater schedule award because he had daily pain and swelling and was no longer eligible for promotion because he was physically incapable of working at a prison. The hearing representative explained the procedures followed by OWCP in making schedule award determinations, and left the record open 30 days.

On June 12, 2014 Dr. Huynh revised her October 30, 2013 impairment evaluation to reflect that appellant had a total seven percent permanent left leg rather than whole person impairment.

By decision dated August 5, 2014 an OWCP hearing representative affirmed the November 22, 2013 schedule award. He found that the medical adviser had provided clear medical reasoning for his conclusion that appellant was entitled to an additional five percent impairment.

Appellant filed an appeal with the Board on August 19, 2014. In a March 2, 2015 order, the Board remanded the case to OWCP to combine files xxxxxx940 and xxxxxx132, to be followed by an appropriate decision.[6]

On April 6, 2015 OWCP combined files xxxxxx132 and xxxxxx940, with the former becoming the master file. On April 6, 2015 it reissued the November 22, 2013 schedule award decision.

LEGAL PRECEDENT

A claimant has the burden of proof to establish a permanent impairment to a scheduled member.[7] The schedule award provision of FECA[8] and its implementing federal regulations[9] 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

[6] Docket No. 14-1894 (issued March 2, 2015).

[7] *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

[8] 5 U.S.C. § 8107.

[9] 20 C.F.R. § 10.404.

consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[10] For decisions after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.[11]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[12] Under the sixth edition, for lower extremity impairments the evaluator identifies the impairment Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).[13] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[14] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[15]

The A.M.A., *Guides* notes that RSD is also known as CRPS, and that this diagnosis is "a challenging and controversial concept" that "has been a troublesome area for impairment rating."[16] The A.M.A., *Guides* provides specific guidelines for an impairment rating to the upper and lower extremities from CRPS. The diagnosis of CRPS must be confirmed based on the diagnostic criteria provided in Table 15-24 (upper extremity) and Table 16-13 (lower extremity).[17] If the diagnosis is confirmed, the number of objective diagnostic criteria points is determined under Table 15-25 (upper extremity) and Table 16-14 (lower extremity).[18] The impairment is then calculated using Table 15-26 for the arms and Table 16-15 for the legs.[19] The default value is adjusted in accord with grade modifiers for functional history, physical examination, and clinical studies.[20] Under the A.M.A., *Guides*, a rating for CRPS is a "stand alone" approach and cannot be combined with any other approach for the same extremity.[21]

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[10] *Id*. at §10.404(a).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013).

[12] A.M.A., *Guides supra* note 2 at 4, section 1.3, "ICF: A Contemporary Model of Disablement."

[13] *Id*. at 494-531.

[14] *Id*. at 521.

[15] *Id*. at 23-28.

[16] *Id.* at 341, 450, 538.

[17] *Id*. at 453 (Table 15-24) and 539 (Table 16-13).

[18] *Id*. at 453 (Table 15-25) and 540 (Table 16-14).

[19] *Id*. at 454 (Table 15-26) and 541 (Table 16-15).

[20] *Id*. at 406-11 for the upper extremities (Table 15-7 to Table 15-10). *Id*. at 515-21 for the lower extremities (Table 16-6 to Table 16-9.

[21] *Id*. at 452, 540.

In applying such a diagnosis-based impairment, the sixth edition of the A.M.A., *Guides* indicates that in most cases only one diagnosis in a region will be appropriate, and if a patient has two significant diagnoses, the examiner should use the diagnosis with the highest impairment in that region that is causally related for the impairment evaluation.[22] FECA and its regulations provide for the reduction of compensation for subsequent injury to the same scheduled member.[23]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP 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.[24]

ANALYSIS

Under file number xxxxxx132, OWCP accepted that on April 11, 2006 appellant fractured his left tibia/fibula and granted him a schedule award for 20 percent permanent left leg. Under file number xxxxxx940, it accepted that on May 24, 2011 he sustained a left leg contusion and subsequently accepted left leg sprain, RSD, CRPS, and compartment syndrome. Under that claim, appellant received a schedule award for an additional 5 percent permanent impairment, for a total 25 percent permanent left lower extremity impairment.

Dr. Huynh, an attending physiatrist, and Dr. Blum, an OWCP medical adviser, agreed that for the diagnosis of CRPS, under Table 16-15 appellant had a class 1 impairment with a default value of seven percent. The medical adviser then combined the 7 percent permanent impairment for CRPS with the 20 percent appellant had previously received for his left leg fracture, concluding that he had 25 percent left leg impairment.

As noted above, FECA regulations provide for the reduction of compensation for subsequent injury to the same scheduled member.[25] A rating for CRPS is a "stand alone" approach and cannot be combined with any other approach for the same extremity.[26] The A.M.A., *Guides* provides that if a claimant has two significant diagnoses, OWCP should use the diagnosis with the greatest impairment.[27] As appellant's left lower extremity fracture, under file number xxxxxx132, yielded an impairment of 20 percent, and the "stand alone" CRPS diagnosis, under file number xxxxxx940, only yielded 7 percent impairment, appellant established that he is entitled to a 20 percent permanent left leg. Thus, he is not entitled to a schedule award greater than the 25 percent previously awarded.

[22] *Id*. at 497; *see E.V.*, Docket No. 11-2117 (May 15, 2012).

[23] 5 U.S.C. § 8108; 20 C.F.R. § 10.404(d); *see R.B.*, Docket No. 09-1786 (issued July 1, 2010).

[24] *See supra* note 11 at Chapter 2.808.6(f) (February 2013).

[25] *Supra* note 23.

[26] *Id*. at 452, 540.

[27] *Supra* note 22.

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 his burden of proof to establish that he has a permanent impairment of the left leg greater than the 25 percent previously awarded.

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board