United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 15-1768**
	)	**Issued: February 10, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 24, 2015 appellant filed a timely appeal from an April 17, 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 has established a ratable impairment of a scheduled member.

FACTUAL HISTORY

This case has previously been before the Board. By order issued August 13, 2008,[2] the Board set aside a November 13, 2007 decision denying a traumatic injury claim, and remanded

[1] 5 U.S.C. § 8101 *et seq.*

[2] Docket No. 08-0962 (issued August 13, 2008).

the case for doubling File No. xxxxxx608, accepted for a December 8, 2004 umbilical hernia, with File No. xxxxxx861 claiming a November 21, 2003 umbilical hernia. The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are set forth below.

On November 21, 2006 appellant, then a 49-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained an umbilical hernia on November 21, 2003 when lifting heavy tubs of mail. The claim was assigned File No. xxxxxx861. Appellant asserted that the November 21, 2003 injury precipitated a December 8, 2004 umbilical hernia requiring surgical repair. On January 11, 2005 OWCP accepted the December 8, 2004 hernia under File No. xxxxxx608. By decision dated February 5, 2007, it denied the claim for a November 21, 2003 umbilical hernia, finding that fact of injury was not established.

Appellant requested an oral hearing, which was held before an OWCP hearing representative on August 27, 2007. She asserted that her physicians believed that the accepted December 8, 2004 hernia was actually a reinjury of the claimed November 21, 2003 hernia. By decision dated November 13, 2007, an OWCP hearing representative affirmed the February 5, 2007 decision. He acknowledged that portions of the medical record under File No. xxxxxx861 appeared to refer to the accepted December 8, 2004 hernia accepted under File No. xxxxxx608. For the reason noted above, the Board set aside the November 13, 2007 hearing representative's decision in its August 13, 2008 order remanding case.

On remand, OWCP obtained a second opinion from Dr. Daniel J. Deziel, a Board-certified surgeon. Dr. Deziel submitted a January 8, 2009 report reviewing the medical record and statement of accepted facts. He noted that appellant had not worked in four years. Dr. Deziel related her account of chronic pelvic pain that made it difficult to walk or sit. Appellant reported that she underwent endometrial ablation in August 2008, with chronic pain since the procedure. On examination, Dr. Deziel found supraumbilical and multiple trocar scars, but "no abdominal or groin hernia detected." He noted a "firm area in the mid epigastrium that is mildly tender," which could be fibrosis at the end of the surgical mesh used in a prior repair, or a possible recurrence of the hernia. Dr. Deziel explained that umbilical hernias were congenital, but could have become symptomatic due to lifting at work. He recommended a computerized tomography (CT) scan to rule out a recurrence of the hernia following the November 2005 surgical repair.

On November 21, 2008 appellant claimed a schedule award. In support of her claim, she submitted medical records regarding degenerative disease of both knees, contemporaneous records regarding March 2005 hernia repairs and an August 2008 endometrial ablation, 2008 magnetic resonance imaging (MRI) scans of the brain, and 2009 MRI scans of both ankles, knees, shoulders, hips, and the thoracic spine.[3]

[3] April 23, 2009 MRI scans of appellant's hips showed uterine fibroids, but no osseous abnormalities. An April 29, 2009 pelvic MRI scan confirmed the presence of uterine fibroids.

By decisions dated June 10, 2009, OWCP accepted a November 21, 2003 precipitation of a preexisting umbilical hernia, but denied continuation of pay from November 21, 2003 to January 5, 2004 as appellant did not report the injury within 30 days.

In a January 14, 2010 letter, OWCP noted that it had accepted a December 8, 2004 pelvic strain under File No. xxxxxx608. As appellant did not submit medical evidence establishing that the injury attained maximum medical improvement OWCP could not conduct additional development of the schedule award claim at that time.

Appellant provided a duplicate copy of a March 3, 2010 report from Dr. R.M. Ubilluz, a Board-certified neurologist and second opinion physician for File No. xxxxxx862,[4] finding no ratable impairment of the upper extremities according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*).

In a June 7, 2010 letter, OWCP advised appellant of the additional evidence needed to establish her schedule award claim, including a report from her attending physician addressing whether the accepted injury caused a permanent impairment of a scheduled member according to the sixth edition of the A.M.A., *Guides*.

In response, appellant submitted imaging study and electrodiagnostic reports that did not contain an impairment rating or otherwise address the issue of permanent impairment. October 16, 2001 pelvic x-rays and April 23, 2009 bilateral hip MRI scans which were within normal limits. A February 3, 2010 abdominal CT scan showing a small midline ventral hernia, evidence of previous ventral herniorrhaphy, and thoracolumbar degeneration. February 8, 2010 nerve conduction velocity (NCV) and electromyography (EMG) studies of the lower extremities showing isolated peroneal motor nerve injury in the right leg, and an axonal and demyelinating process affecting the right tibial motor nerve. August 6, 2012 EMG and NCV studies of the lower extremities showed bilateral L5 radiculopathy and bilateral polyneuropathies. February 19, 2014 bilateral hip x-rays were within normal limits.

By decision dated September 25, 2014, OWCP denied appellant's schedule award claim as the medical evidence failed to demonstrate a measurable impairment related to the accepted November 21, 2003 umbilical hernia.

In an October 16, 2014 letter, appellant requested an oral hearing, contending that the August 2008 endometrial ablation was a compensable work factor.

At the hearing, held February 12, 2015, appellant asserted that the accepted umbilical hernia caused impairment to her lower extremities, uterus, and bladder. Following the hearing, she submitted July 24, 2012 imaging study report diagnosing uterine fibroids. Appellant also provided an August 13, 2014 abdominal CT scan report showing two small ventral hernias

[4] Effective November 6, 2009, OWCP combined appellant's claims under File Nos. xxxxxx055 for upper extremity injuries, xxxxxx273 for upper and lower extremity injuries, and xxxxxx862 for lower extremity injuries under master File No. xxxxxx055.

superior to the ventral mesh.[5] She also submitted her March 11, 2015 letter asserting that the 2008 endometrial ablation and diagnosed lower extremity neuropathies were work related and established a schedule award.

By decision dated April 17, 2015, an OWCP hearing representative affirmed the September 25, 2014 decision, finding that the medical evidence was insufficient to establish that the November 21, 2013 or December 8, 2014 hernias caused any permanent impairment to a scheduled member of the body. He noted that there was no medical evidence that the accepted hernias caused appellant's gynecologic or urinary issues.

LEGAL PRECEDENT

The schedule award provisions of FECA[6] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. It, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a mater which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[7] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*.[8]

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).[9] Under the sixth edition, 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).[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

The Board notes that 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

[5] A June 27, 2014 swallow study was normal, with anterior osteophytes C5-7 slightly indenting the posterior esophagus.

[6] 5 U.S.C. § 8107.

[7] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[9] A.M.A., *Guides* 3, section 1.3, "ICF: A Contemporary Model of Disablement" (6th ed. 2009).

[10] A.M.A., *Guides* 494-531 (6th ed. 2009).

by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member.[11]

ANALYSIS

OWCP accepted that appellant sustained umbilical hernias on November 21, 2003 and December 8, 2004, requiring multiple surgical repairs in March 2005. On November 21, 2008 appellant claimed a schedule award. She contended that the accepted hernias and surgical repairs caused impairment to her lower extremities, uterus, and bladder.

In support of her claim, appellant submitted numerous imaging and electrodiagnostic studies demonstrating degenerative disease of both knees, uterine fibroids, two small midline ventral hernias, an isolated peroneal motor nerve injury in the right leg, a demyelinating process of the right tibial motor nerve, and bilateral L5 radiculopathy. She also provided reports from an August 2008 endometrial ablation. However, none of these reports contains medical rationale supporting that the accepted umbilical hernias caused permanent impairment of a scheduled member of the body. Dr. Deziel, a Board-certified surgeon and second opinion physician, was not asked to perform an impairment rating and did not address the schedule award issue. Dr. Ubilluz, a Board-certified neurologist and second opinion physician in File No. xxxxxx862, found no ratable impairment of the upper extremities due to work factors.

OWCP advised appellant by June 7, 2010 letter of the need to submit her physician's opinion addressing whether the accepted umbilical hernias caused a permanent impairment of a scheduled member of the body. As appellant did not do so, she did not meet her burden of proof to establish her schedule award claim.

On appeal, appellant asserts that she sustained a compensable impairment of the ilioinguinal nerve affecting the left lower extremity, due to November 21, 2003, December 8, 2004, and September 16, 2005 hernias as accepted by OWCP on May 18, 2006 under File No. xxxxxx608. The Board notes that she did not submit rationalized medical opinion evidence diagnosing an ilioinguinal nerve impairment affecting her left leg, or opining that such impairment was related to the accepted umbilical hernias.

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 established a ratable impairment of a scheduled member.

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 17, 2015 is affirmed.

Issued: February 10, 2016
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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