

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

G.S., Appellant)

and)

DEPARTMENT OF JUSTICE, U.S. MARSHALS)
SERVICE, Peoria, IL, Employer)

**Docket No. 17-1318
Issued: October 11, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 30, 2017 appellant filed a timely appeal from a May 12, 2017 merit 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 met his burden of proof to establish permanent impairment of a scheduled member of the body, warranting a schedule award.

On appeal appellant requests that he be referred to another attending physician as his current attending physician did not conduct a thorough impairment evaluation.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 2, 2016 appellant, then a 51-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that on July 27, 2016 he experienced constant pain in his lower left abdominal wall above the pubic area to his waist while performing squats in the employing establishment's gym. OWCP accepted the claim for unilateral left inguinal hernia without obstruction or gangrene, not specified as recurrent. It also authorized laparoscopic left inguinal hernia repair with mesh performed on September 23, 2016 by Dr. John K. Paulsen, an attending Board-certified surgeon.

On December 13, 2016 appellant filed a claim for a schedule award (Form CA-7).

On December 28, 2016 OWCP received an August 2, 2016 progress note from Dr. Paulsen. He indicated that appellant presented complaining about a seven-day history of left-sided groin pain. Dr. Paulsen noted a history of the accepted July 27, 2016 work injury. He reviewed appellant's medical history which included a right inguinal hernia repair in 1997 and his social and family background. Dr. Paulsen further reviewed his systems and reported normal findings on examination. He advised that appellant had a groin injury.

By letter dated December 29, 2016, OWCP advised appellant of the deficiencies of his claim and requested a medical report from his physician assessing his permanent impairment based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)² and establishing the date on which he reached maximum medical improvement (MMI).

Dr. Paulsen, in a progress note dated January 12, 2017, advised that appellant was fully healed status post the September 23, 2016 laparoscopic left inguinal hernia repair. He opined that appellant had no permanent impairment and could return to full-duty work without restriction. Appellant also submitted a January 12, 2017 progress note from a nurse in Dr. Paulsen's office.

On May 8, 2017 an OWCP district medical adviser (DMA) reviewed the medical record, including Dr. Paulsen's August 12, 2016 and January 12, 2017 findings, and found that appellant had no impairment of either lower extremity due to his left inguinal hernia repair.³ He utilized Table 6-10 on page 122 of the sixth edition of the A.M.A., *Guides* and assigned a class 0 impairment rating for physical findings in the absence of symptoms, which correlated with no impairment due to the authorized left inguinal hernia repair.⁴ The DMA determined that appellant had reached MMI on January 12, 2017, the date of Dr. Paulsen's impairment

² A.M.A., *Guides* (6th ed. 2009).

³ The Board notes that the DMA inadvertently found that, appellant had no permanent impairment of the bilateral upper extremities rather than the bilateral lower extremities as OWCP, in its April 19, 2017 memorandum referring appellant's case record to the DMA, specifically requested that he determine the extent of impairment of appellant's bilateral lower extremities.

⁴ Table 6-10 provides ratings for whole person impairment due to a hernia.

evaluation. He concluded that no further medical or surgical intervention was likely to improve his condition.

In a May 12, 2017 decision, OWCP denied appellant's claim for a schedule award. It found that the DMA's report established that appellant had no impairment as a result of his accepted employment injury.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing regulations⁶ 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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter 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 the appropriate standards for evaluating schedule losses.⁷

The sixth edition requires identifying the impairment for the Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).⁸ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

No schedule award is payable for a member, function, or organ of the body not specified in FECA or in the implementing regulations.⁹ FECA identifies members such as the arm, leg, hand, foot, thumb and finger, organs to include the eye and functions as loss of hearing and loss of vision.¹⁰ Section 8107(c)(22) of FECA provides for the payment of compensation for permanent loss of any other important external or internal organ of the body as determined by the Secretary of Labor.¹¹ The Secretary of Labor has made such a determination and pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus, and tongue to the schedule.¹²

⁵ *Supra* note 2.

⁶ 20 C.F.R. § 10.404 (1999).

⁷ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

⁸ A.M.A., *Guides* 494-531.

⁹ See *Leroy M. Terska*, 53 ECAB 247 (2001).

¹⁰ *Id.*; 5 U.S.C. § 8107(c).

¹¹ *Id.* at § 8122(c)(22).

¹² 20 C.F.R. § 10.404; *Henry B. Floyd, III*, 52 ECAB 220 (2001).

Before the A.M.A., *Guides* can be utilized, a description of impairment must be obtained from the claimant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹³

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a 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.¹⁴

ANALYSIS

The Board finds that appellant failed to establish any permanent impairment to his bilateral lower extremities. OWCP accepted appellant's claim for unilateral left inguinal hernia without obstruction or gangrene, not specified as recurrent as a result of a July 27, 2016 employment injury. On December 13, 2016 appellant filed a claim for a schedule award.¹⁵

In support of his claim, appellant submitted progress notes from Dr. Paulsen, his attending physician. In a January 12, 2017 progress note, Dr. Paulsen found that appellant had no permanent impairment and released him to return to full-duty work without restriction. He opined that appellant was fully healed status post his authorized September 23, 2016 laparoscopic left inguinal hernia repair. Dr. Paulsen opined that appellant had no permanent impairment to a scheduled body member causally related to his accepted employment injury under the sixth edition of the A.M.A., *Guides*. His subsequent progress note dated August 2, 2016 did not address the extent of any permanent impairment due to appellant's accepted injury, provide a description of any impairment in accordance with the A.M.A., *Guides*, or opine on whether appellant reached MMI. As noted, the evaluation made by the attending physician must include a description of the impairment that is of sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹⁶ Dr. Paulsen found no permanent impairment due to the accepted

¹³ *D.M.*, Docket No. 11-775 (issued October 11, 2011); *Peter C. Belkind*, 56 ECAB 580 (2005).

¹⁴ *Supra* note 7 at Chapter 2.808.6(f) (March 2017).

¹⁵ The Board finds that a schedule award cannot be granted for permanent impairment based on appellant's accepted hernia condition because the hernia or abdomen have not been included under FECA or the regulations as a scheduled member. *D.C.*, Docket No. 14-1648 (issued December 15, 2014); *K.S.*, Docket No. 14-133 (issued April 1, 2014); *K.H.*, Docket No. 09-275 (issued August 14, 2009); *S.K.*, Docket No. 08-848 (issued January 26, 2009). 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. *D.C., id.*; *Danny E. Haley*, 56 ECAB 393 (2005).

¹⁶ *Supra* note 12.

work injury. As such his progress notes are of diminished probative value and therefore insufficient to establish appellant's permanent impairment.

On May 8, 2017 an OWCP DMA reviewed the medical record and found that appellant had no permanent impairment of either lower extremity. He used Dr. Paulsen's August 12, 2016 and January 12, 2017 examination results and found no basis for permanent impairment of the legs. He also applied Table 6-10, page 122 of the sixth edition of the A.M.A., *Guides*. Table 6-10 provides criteria for evaluating whole person impairment due to abdominal herniation. However, the Board notes that FECA does not authorize schedule awards for permanent impairment of the whole person.¹⁷ Furthermore, a schedule award cannot be granted for a hernia because a 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.¹⁸

The Board finds that there is no medical evidence in conformance with the A.M.A., *Guides* showing that appellant has permanent impairment of a scheduled member of the body, warranting a schedule award.

Appellant failed to submit sufficient medical evidence to establish permanent impairment to a specified member, organ, or function of the body listed in FECA or its implementing regulations as a result of his employment-related accepted unilateral left inguinal hernia without obstruction or gangrene, not specified as recurrent. Thus, he has not met his burden of proof.

On appeal appellant requests that he be referred to another attending physician as his current attending physician did not conduct a thorough impairment evaluation. He may submit a written request for a new physician to OWCP.¹⁹

The Board also notes that 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 permanent impairment of a scheduled member of the body warranting a schedule award.

¹⁷ *S.M.*, Docket No. 14-1052 (issued September 4, 2014).

¹⁸ *Id.*; *S.K.*, Docket No. 08-848 (issued January 26, 2009).

¹⁹ 20 C.F.R. § 10.316.

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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