

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

S.J., Appellant)	
)	
and)	Docket No. 18-0010
)	Issued: April 9, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Detroit, MI, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 2, 2017 appellant, through counsel, filed a timely appeal from an August 28, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has established a permanent impairment of a scheduled member entitling her to a schedule award.

FACTUAL HISTORY

On July 13, 2006 appellant, then a 43-year-old carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury to her back while performing employment duties including lifting and transporting mail, and while continuously leaning on her right buttock when delivering mail in her vehicle. By decision dated October 16, 2006, OWCP accepted the claim for aggravation of right sciatica, aggravation of herniated disc at L5-S1, and aggravation of lumbar radiculopathy. Appellant stopped work on March 1, 2006 and received wage-loss compensation and medical benefits on the supplemental rolls as of March 2, 2006. Under subsidiary OWCP File No. xxxxxx665, she filed a traumatic injury claim (Form CA-1) alleging that on January 6, 2005 she slipped and fell on ice and snow and sustained a hip, arm, shoulder, and back injury. OWCP accepted the claim for lumbosacral strain/sprain, right hip contusion, and buttock contusion. Appellant stopped work and returned to limited duty on February 15, 2005. She returned to full-duty work on March 24, 2005. The two claims were combined under this master OWCP File No. xxxxxx531.

By decision dated January 15, 2016, OWCP terminated appellant's wage-loss compensation and medical benefits effective that same date, finding that her work-related medical conditions and disability had resolved.³ It found that the special weight of the medical evidence rested with Dr. Pollak, serving as an impartial medical examiner, who found that appellant no longer had any residuals or disability causally related to her accepted work-related medical conditions.⁴

On December 9, 2016 appellant filed a claim for a schedule award (Form CA-7).

In support of her claim, appellant submitted a November 17, 2016 note from Dr. Bradford Woelke, Board-certified in family medicine, who opined that she had reached maximum medical improvement (MMI). She also submitted a January 13, 2017 duty status report (Form CA-17) from Dr. Woelke restricting her from working more than four hours per day.

³ On December 4, 2015 OWCP notified appellant of a proposal to terminate her wage-loss compensation and medical benefits based on the referee report of Dr. Mitchell T. Pollak, a Board-certified orthopedic surgeon, who opined that appellant was not experiencing any residuals or disability connected to the March 1, 2006 employment injuries as her conditions had ceased.

⁴ In an October 6, 2015 medical report, Dr. Pollack reported that appellant's lumbosacral sprain, right hip contusion, and buttock contusion had resolved with no objective findings of disability. He further reported that the medical record did not support an aggravation of right sciatica, herniated disc at L5-S1, and lumbar radiculopathy.

By development letter dated December 19, 2016, OWCP requested that appellant submit an impairment evaluation from her attending physician in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁵

By letter dated January 23, 2017, counsel for appellant requested authorization for appellant to be examined at Advanced Orthopedics and Physical Therapy for an impairment rating.

By decision dated February 9, 2017, OWCP denied appellant's claim for a schedule award as the evidence was insufficient to establish that she sustained permanent impairment to a member or function of the body.

By letter dated February 14, 2017, appellant, through counsel, requested an oral hearing before an OWCP hearing representative. A hearing was held on July 26, 2017 where appellant testified in support of her schedule award claim. She reported that she had a pending appointment with Dr. Peter E. Metropoulos, an osteopath Board-certified in internal medicine and specializing in occupational medicine, for an impairment rating. The record was held open for 30 days.

In a July 31, 2017 medical report Dr. Metropoulos reviewed appellant's medical history and provided findings on physical examination. He noted examination findings of pain behaviors, right-sided sciatic pain, negative straight-leg raising bilaterally, right hip weakness, antalgic gait with use of a cane, and no edema or ecchymosis. Dr. Metropoulos diagnosed chronic pain and right sided low back/buttock pain with right lower extremity and leg dense paresthesia. He also noted the accepted conditions of right sciatica, lumbar disc displacement, and lumbosacral neuritis. Dr. Metropoulos explained that appellant had reported a history of a fall causing injury to the region of the right buttock in the vicinity of the sciatic complex, however, electromyograph and magnetic resonance imaging scan testing had not provided any evidence that identified the source of the finding. He opined that she reached MMI on the date of his examination and that the only remaining condition which could be rated for impairment was that of the right hip contusion. Citing Table 16-4, Hip Regional Grid, of the A.M.A., *Guides*, Dr. Metropoulos calculated nine percent permanent impairment of the right lower extremity for chronic trochanteric bursitis with documented abnormal gait.⁶ He determined that this resulted in class 1 impairment with default value of grade C. Dr. Metropoulos assigned a grade modifier of 2 for functional history, a grade modifier of 2 for physical examination, and no grade modifier for clinical studies as there were no studies available for review. Applying the net adjustment formula, he subtracted 1, the numerical value of the class, from the numerical value of the grade modifier for each component (functional history and physical examination) and then added those values, resulting in a net adjustment of 2 $((2-1) + (2-1))$.⁷ This resulted in a class 1 adjustment +2, warranting movement two places to the right for grade E, resulting in a rating of nine percent permanent impairment of the right lower extremity.

⁵ A.M.A., *Guides* (6th ed. 2009).

⁶ *Id.* at 512, Table 16-4.

⁷ *Id.* at 521.

By decision dated August 28, 2017, an OWCP hearing representative affirmed the February 9, 2017 decision denying appellant's schedule award claim. The hearing representative noted that Dr. Metropoulos based his impairment rating on right hip trochanteric bursitis, a condition not accepted as employment related. The hearing representative further found that there was no basis for a schedule award as Dr. Pollak, the referee medical examiner, found that the accepted conditions had resolved and there were no additional employment-related conditions.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.⁸ However, FECA does not specify the manner in which the percentage of loss shall be determined. 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. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁹

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).¹⁰ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.¹¹

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

⁸ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

⁹ *Id.* at § 10.404. See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

¹⁰ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

¹¹ *Isidoro Rivera*, 12 ECAB 348 (1961).

¹² *Supra* note 5 at 493-531.

¹³ *Supra* note 7.

¹⁴ *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.¹⁵ For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.¹⁶

ANALYSIS

The Board finds that appellant has not established that she has a permanent impairment of a scheduled member entitling her to a schedule award.

OWCP accepted appellant's claim for aggravation of right sciatica, aggravation of herniated disc at L5-S1, and aggravation of lumbar radiculopathy under this master OWCP File No. xxxxxx531. It combined this master claim with subsidiary OWCP File No. xxxxxx665, which had previously been accepted for lumbosacral strain/sprain, right hip contusion, and buttock contusion. By decision dated January 15, 2016, OWCP terminated appellant's medical and wage-loss compensation benefits finding that Dr. Pollak, serving as the referee medical examiner, had determined that her work-related medical conditions and disability had resolved.

Appellant filed a claim for a schedule award and submitted a July 31, 2017 impairment rating from Dr. Metropoulos in support of her claim. Dr. Metropoulos opined that she reached MMI on the date of his examination and that the only remaining condition which could be rated for impairment was that of the right hip contusion. He discussed his impairment calculations and citing Table 16-4, Hip Regional Grid, of the A.M.A., *Guides*, calculated nine percent permanent impairment of the right lower extremity for chronic trochanteric bursitis with documented abnormal gait.

By decision dated August 28, 2017, an OWCP hearing representative affirmed the February 9, 2017 decision denying appellant's schedule award claim. The hearing representative noted that there was no basis for a schedule award as Dr. Pollak had determined that her work-related conditions had resolved without residuals or disability. The Board notes that while OWCP's previously issued January 15, 2016 termination decision determined that the aforementioned conditions had resolved, this does not in itself preclude a claimant from establishing an employment-related permanent impairment.¹⁷

The Board has held that termination of a claim for all benefits due to a finding of no residuals of the accepted conditions does not bar a subsequent schedule award. Rather, the claims examiner should consider the schedule award matter separately from the termination of benefits.¹⁸ The Federal (FECA) Procedure Manual provides that impairment ratings for schedule awards include those conditions accepted by OWCP as job related and any preexisting permanent

¹⁵ *Veronica Williams*, 56 ECAB 367 (2005).

¹⁶ *F.E.*, Docket No. 17-0584 (issued December 18, 2017).

¹⁷ *See W.J.*, Docket No. 08-2409 (issued September 11, 2009).

¹⁸ *Supra* note 10 at Chapter 2.808.11 (February 2013).

impairment of the same member or function. If the work-related injury has affected any residual usefulness in whole or in part, a schedule award may be appropriate.¹⁹

Dr. Metropoulos calculated appellant's permanent impairment rating for the condition of right hip chronic trochanteric bursitis. However, the only previously accepted right hip condition was a right hip contusion. Since the accepted condition was a right hip contusion, the medical evidence must establish that this condition caused the permanent impairment of the right hip. The Board has previously explained that the medical evidence must show that the employment injury contributed to the permanent impairment for which schedule award compensation is alleged.²⁰ Dr. Metropoulos, however, offered no findings that appellant still had a right hip contusion. Furthermore, he offered no medical explanation as to how the accepted right hip contusion sustained on January 6, 2005 caused a permanent impairment due to right hip bursitis in 2017. As Dr. Metropoulos offered no medical explanation that appellant's employment injury contributed to the permanent impairment for which schedule award compensation is sought, his report is of limited probative value.²¹

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.²²

CONCLUSION

The Board finds that appellant has not established a permanent impairment of a scheduled member entitling her to a schedule award.

¹⁹ *Id.* at Chapter 2.808.5(d) (March 2017). *See also Raymond E. Gwynn*, 35 ECAB 247, 253 (1983).

²⁰ *See M.C.*, Docket No. 17-1089 (issued November 13, 2017).

²¹ *Id.*

²² *See Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2018
Washington, DC

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

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

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