United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
and	)	**Docket No. 17-1864**
	)	**Issued: March 1, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Greenville, SC, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 1, 2017 appellant filed a timely appeal from a May 9, 2017 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 either the right or left lower extremity entitling him to a schedule award.

FACTUAL HISTORY

On March 28, 2016 appellant, then a 60-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he experienced left-sided back pain while in the performance of duty. He stopped work on March 28, 2016 and returned to his regular

[1] 5 U.S.C. § 8101 *et seq.*

employment on October 12, 2016. OWCP accepted the claim for lumbar intervertebral disc displacement at L5-S1.

Dr. Philip Julius Hodge, a Board-certified neurosurgeon, performed an authorized lumbar laminotomy and discectomy at L5-S1 on July 13, 2016.

On November 16, 2016 appellant filed a claim for a schedule award (Form CA-7).

By letter dated November 18, 2016, OWCP advised appellant and Dr. Hodge that FECA did not provide schedule awards for permanent impairment of the spine, but that an award could be paid for an upper or lower extremity impairment resulting from a spinal nerve injury. It noted that it used the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[2] for impairment ratings and that any work-related spinal nerve impairment causing impairment to the extremities should be rated using *The Guides Newsletter,* Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009) (*The Guides Newsletter*).

In a report dated November 15, 2016, received by OWCP on December 13, 2016, Dr. Hodge diagnosed a herniated lumbar disc and indicated that appellant was there for a "rating and release" following a March 28, 2016 work injury. He noted that he had continued symptoms of cramping in the lower leg with back pain. Dr. Hodge related, "[Appellant] returns after his lumbar discectomy. He has returned to work without difficulty, but still has some occasional low back pain and leg pain that is minimal. I feel that [he has] met maximum medical improvement [MMI] and has five [percent] impairment to his lumbar spine based on his diagnosis of herniated disc." Dr. Hodge concluded that appellant had five percent permanent impairment of the lumbar spine under the sixth edition of the A.M.A., *Guides*.

Dr. Arthur S. Harris, a Board-certified orthopedic surgeon and an OWCP medical adviser, reviewed the record on December 27, 2016. He noted that Dr. Hodge found no neurological deficit of either lower extremity. Dr. Harris opined that appellant had zero percent permanent impairment of each lower extremity.

On January 9, 2017 OWCP requested that Dr. Hodge provide an impairment evaluation using the sixth edition of the A.M.A., *Guides*. It enclosed a copy of the December 27, 2016 report from OWCP's medical adviser for his review. OWCP requested that Dr. Hodge provide a detailed description of any permanent impairment as well as the objective findings and subjective complaints upon which he based his impairment rating.

In a state workers' compensation form report dated November 15, 2016, received by OWCP on February 3, 2017, Dr. Hodge diagnosed a lumbar herniated disc with radiculopathy of the S1 nerve root. He indicated that, based on the sixth edition of the A.M.A., *Guides*, appellant had three percent permanent impairment as a result of radiculopathy of the S1 nerve root.

Dr. Hodge also provided an unsigned response to OWCP's January 9, 2017 letter, received by OWCP on February 3, 2017. He described the impairment upon which he based the

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

rating as a herniated disc causing S1 radiculopathy. Dr. Hodge indicated that appellant had three percent permanent impairment as a result of the radiculopathy. He also enclosed responses to questions from the November 18, 2016 letter from OWCP, noting that appellant had mild chronic S1 radiculopathy causing a loss of sensation to light touch at the S1 distribution.

On March 31, 2017 Dr. Harris requested that OWCP have Dr. Hodge specify whether his impairment rating was for the right or left lower extremity. In an unsigned response received April 17, 2017, Dr. Hodge indicated that appellant had three percent permanent impairment of the left lower extremity.

Dr. Harris, on May 8, 2017, again reviewed the record. He found there was no objective evidence of a neurological deficit of either lower extremity. Dr. Harris noted that Dr. Hodge indicated in letters dated November 18, 2016 and January 9, 2017 that appellant had S1 radiculopathy causing three percent permanent impairment, but did not provide any objective evidence supporting a lower extremity neurological deficit. He opined that appellant had no impairment of either lower extremity under *The Guides Newsletter*.

By decision dated May 9, 2017, OWCP denied appellant's schedule award claim. It found that the medical evidence was insufficient to show that he had a permanent impairment of either leg.

On appeal appellant contends that he still has a herniated disc even after surgery causing lower extremity pain and numbness. He also requests compensation for sick leave used due to his injury.

LEGAL PRECEDENT

The schedule award provision of FECA,[3] and its implementing federal regulation,[4] 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 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.[5] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[6]

Neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.[7] However, a

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Id.* at § 10.404(a).

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

[7] 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see B.C.*, Docket No. 17-1617 (issued January 8, 2018); *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.[8] The sixth edition of the A.M.A., *Guides* provides a specific methodology for rating spinal nerve extremity impairment.[9] It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine. The FECA-approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities. The appropriate tables for rating spinal nerve extremity impairment are incorporated into OWCP's procedures.[10]

ANALYSIS

OWCP accepted that appellant sustained lumbar intervertebral disc displacement at L5-S1 due to a March 28, 2016 employment injury. Appellant underwent a lumbar laminotomy and discectomy at L5-S1 on July 13, 2016.

On November 16, 2016 appellant filed a claim for a schedule award. In a November 15, 2016 impairment evaluation, Dr. Hodge, his treating physician, indicated that he experienced some mild leg and low back pain subsequent to his lumbar discectomy. He opined that appellant had reached MMI. Dr. Hodge found that, according to the A.M.A., *Guides*, he had five percent permanent impairment of the lumbar spine. As noted, however, FECA does not provide a schedule award for permanent impairments of the back.[11] FECA also excludes the back as an organ and, therefore, the back does not come under the provision for payment of a schedule award.[12]

OWCP on January 9, 2017 requested that Dr. Hodge provide an impairment rating that included a detailed description of the impairment and the objective evidence upon which he based the rating. Dr. Hodge opined that appellant had three percent permanent impairment due to a herniated disc resulting in radiculopathy at S1. In a response to questions posed by OWCP on November 18, 2016, he indicated that appellant had mild radiculopathy at S1 which resulted in a loss of sensation to light touch at the S1 distribution. On April 17, 2017 Dr. Hodge indicated that appellant had three percent impairment of the left lower extremity due to S1 radiculopathy. He did not, however, reference *The Guides Newsletter* in reaching his impairment rating or provide detailed findings on examination supporting his conclusion.[13] The medical evidence must include a description of any physical impairment in sufficient detail so that the claims

[8] *Supra* note 5 at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a(3) (February 2013).

[9] The methodology and applicable tables were initially published in *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009).

[10] *See supra* note 6 at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4.

[11] 5 U.S.C. § 8101(19); *L.C.*, Docket No. 15-1671 (issued May 24, 2016).

[12] *Id*.

[13] *See D.M.*, Docket No. 17-1128 (issued November 22, 2017).

examiner and others reviewing the file would be able to clearly visualize the impairment with its resulting restrictions and limitations.[14]

Dr. Harris reviewed the evidence on May 8, 2017 and advised that there was no objective evidence supporting that appellant had a neurological deficit of either lower extremity. He found no permanent impairment of either lower extremity under *The Guides Newsletter*. The Board finds that Dr. Harris properly explained that there was no objective evidence to support permanent impairment of the lower extremities. Appellant did not submit any further medical evidence to support that he was entitled to a schedule award under FECA. Accordingly, the Board finds that he has not established entitlement to a schedule award.[15]

On appeal appellant contends that he has numbness and pain in his lower extremities due to his herniated disc. He has the burden of proof, however, to submit medical evidence in accordance with the A.M.A., *Guides* supporting a permanent impairment of a scheduled member or function.[16]

Appellant also requests compensation for his use of sick leave due to his work injury and resulting surgery. The Board's jurisdiction, however, is limited to reviewing final adverse decisions of OWCP issued under FECA.[17] OWCP has not issued a final adverse decision relative to this issue and thus it is not before the Board at this time.

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.

CONCLUSION

The Board finds that appellant has not established a ratable impairment of either the right or left lower extremity entitling him to a schedule award.

[14] *See V.W.*, Docket No. 17-0976 (issued August 25, 2017).

[15] *See N.E.*, Docket No. 13-0187 (issued April 29, 2013).

[16] *See N.H.*, Docket No. 17-0696 (issued July 19, 2017).

[17] 20 C.F.R. §§ 501.2(c) and 501.3.

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 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