United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
and	)	**Docket No. 09-999**
	)	**Issued: November 19, 2009**
DEPARTMENT OF THE ARMY, U.S. ARMY MATERIAL COMMAND, Richmond, KY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 6, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 12, 2009 merit decision. Pursuant to 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 that he had permanent leg impairment, due to his March 13, 2002 employment injury, which would entitle him to schedule award compensation.

FACTUAL HISTORY

The Office accepted that on March 13, 2002 appellant, then a 57-year-old explosives operator/materials handler sustained displacement of his L4-5 disc without myelopathy due to a

fall at work.[1] He received compensation from the Office for periods of disability. In May 2005 the Office adjusted appellant's compensation based on its determination that his actual wages as facility management clerk fairly and reasonably represented his wage-earning capacity.

On August 17, 2006 appellant filed a claim alleging that he was entitled to a schedule award due to his March 13, 2002 employment injury.

In a November 2, 2006 report, Dr. Karim Rasheed, an attending Board-certified anesthesiologist, diagnosed chronic lower back pain with pain radiating into the left leg consistent with a lumbosacral radiculopathy which could be related to both the L4-5 and L5-S1 discs. He also diagnosed lumbosacral spondylosis. The findings of November 15, 2006 MRI scan testing showed mild degenerative disc disease at the L4-5 and L5-S1 without evidence of focal disc herniation or nerve root swelling.

Dr. Rasheed referred appellant to Dr. Terry L. Troutt, a Board-certified physical medicine and rehabilitation physician, for further evaluation. In a March 20, 2007 report, Dr. Troutt indicated that appellant complained of chronic, left-sided, low back pain, particularly with activity, with numbness that extended into the left leg at least to the knee and sometimes to the left foot. Dr. Troutt stated that on examination appellant exhibited L5-S1 spasms and that back flexion and extension were painful. He had 5/5 strength in his legs and sensation was intact to light touch throughout. Dr. Troutt indicated that, based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), Table 15-3 on page 384, appellant fell under Diagnosis-Related Estimate Lumbar Category II which constituted a six percent whole person impairment rating.

In a June 26, 2007 decision, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he had permanent leg impairment, due to his March 13, 2002 employment injury, which would entitle him to schedule award compensation.

Appellant requested a review of the written record by an Office hearing representative. He submitted a June 18, 1997 report of Dr. Rasheed, but this report did not provide an assessment of his permanent impairment. In a November 20, 2007 decision, an Office hearing representative affirmed the Office's June 26, 2007 decision. She noted that the report of Dr. Troutt impermissibly evaluated back impairment and provided a whole person impairment.

On November 12, 2007 and April 8, 2008 Dr. Rasheed indicated that appellant reported pain radiating from his left back into his left leg and occasional episodes of numbness and tingling in his left leg.

In an August 2, 2008 report, Dr. Martin Fritzhand, an attending Board-certified preventive medicine physician, stated that appellant complained of intermittent dull low back pain radiating to the left hip and down the posterior aspect of the leg to the foot, worse with

[1] The findings of March 20, 2002 magnetic resonance imaging (MRI) scan testing of the lumbar spine showed a disc protrusion at L4-5 which extended all the way across but was worse to the left of the midline with extension into the left lateral recess.

standing, walking or other activity. He also reported weakness in the left leg and numbness localized to the left foot. Dr. Fritzhand indicated that on examination appellant exhibited tenderness on palpation of the left posterior iliac crest and stated that he had difficulty forward bending at the waist to 70 degrees. Appellant also had limited motion on extension and left lateral flexion. Dr. Fritzhand stated that there was evidence of nerve root damage secondary to appellant's injury as muscle strength was decreased over the dorsiflexors of the left ankle, atrophy was noted over the left leg and there was sensory loss involving the left lower extremity. He discussed appellant's reported difficulties with performing various tasks. With respect to the fifth edition of the A.M.A., *Guides*, Dr. Fritzhand stated:

> "Table 16-10 indicates a sensory/pain impairment of 3/5 (50 percent) while Table 16-11 indicates a motor/power impairment of 4/5 (25 percent). Figures 17-8 and 17-9 indicate an impairment to the sciatic nerve. Table 17-37 indicates a 75 percent motor and 17 percent sensory/pain impairment due to the sciatic nerve. Thus, the patient has an 18.75 percent [plus] 12.75 percent impairment to the left lower extremity. It is my medical opinion that the patient has sustained a permanent partial impairment to the left lower extremity of 31 percent."

In October 30 and November 13, 2008 reports, Dr. James W. Dyer, a Board-certified orthopedic surgeon serving as an Office medical adviser, stated that Dr. Fritzhand did not adequately explain why he found work-related impairment associated with the sciatic nerve.

In a January 6, 2009 report, Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon serving as an Office referral physician, stated that appellant complained of intermittent 1ow back pain and intermittent numbness, tingling and burning sensation in his left foot. He indicated that on examination appellant had no abnormal rotation or flexion of the trunk to one side or the other in either position. Dr. Sheridan had no points of tenderness in the lumbar spinous processes, interspinous ligaments of the lumbar area, sacrum, coccyx, sacroiliac joints, sciatic notches or buttocks. There was no lumbar scoliosis, iliac crest asymmetry or lumbar paravertebral spasm. Appellant had full lumbar motion in all modes with flexion to 90 degrees. Dr. Sheridan indicated that examination of appellant's extremities showed normal sensation to light touch, pinprick, vibration and proprioception. His hips had normal range of motion and strength was 5/5 in all motor groups. Dr. Sheridan discussed the diagnostic testing of record noting that November 15, 2006 MRI scan testing showed some degeneration at L4-5 and L5-S1 but no focal disc herniation or nerve root swelling. He stated:

> "I believe maximum medical improvement occurred November 23, 2002, six months post injury. I do not find any evidence of radiculopathy affecting the lower extremities. I think the impairment of both lower extremities is zero percent as there is no evidence of lower extremity radiculopathy on either side on my exam[ination]."

In a February 6, 2009 report, Dr. Dyer indicated that he agreed with Dr. Sheridan that appellant did not have any employment-related impairment of his legs.

In a February 12, 2009 decision, the Office affirmed its November 20, 2007 decision. It indicated that the opinion of Dr. Sheridan, as confirmed by Dr. Dyer, constituted the weight of

the evidence with respect to impairment and found that the report of Dr. Fritzhand was of limited probative value.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim, including that he sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.[3]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4]

The schedule award provision of the Act[5] and its implementing regulations[6] 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, the Act 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. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[7] A schedule award is not payable for the loss, or loss of use, of a part of the body that is not specifically enumerated under the Act. Neither the Act nor its implementing regulations provide for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of organ under the Act.[8]

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[2] 5 U.S.C. §§ 8101-8193.

[3] *See Bobbie F. Cowart*, 55 ECAB 476 (2004). In *Cowart*, the employee claimed entitlement to a schedule award for permanent impairment of her left ear due to employment-related hearing loss. The Board determined that appellant did not establish that an employment-related condition contributed to her hearing loss and, therefore, it denied her claim for entitlement to a schedule award for the left ear.

[4] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404 (1999).

[7] *Id*.

[8] *James E. Mills*, 43 ECAB 215, 219 (1991); *James E. Jenkins*, 39 ECAB 860, 866 (1990).

ANALYSIS

The Office accepted that on March 13, 2002 appellant sustained displacement of his L4-5 disc without myelopathy, and on August 17, 2006 appellant filed a claim alleging that he was entitled to a schedule award for that employment injury. It found that appellant had not established entitlement to schedule award compensation.

The Board finds that appellant did not submit sufficient medical evidence to establish that he has permanent leg impairment, due to his March 13, 2002 employment injury, which would entitle him to schedule award compensation.

In a March 20, 2007 report, Dr. Troutt indicated that on examination appellant exhibited L5-S1 spasms and that back flexion and extension were painful. He had 5/5 strength in his legs and sensation was intact to light touch throughout. Dr. Troutt stated that, based on the fifth edition of the A.M.A., *Guides* (5th ed. 2001), Table 15-3 on page 384, appellant fell under diagnosis-related estimate lumbar Category II which constituted a six percent whole person impairment rating.[9] This report is of limited probative value, however, regarding the main issue of the present case because Dr. Troutt did not provide any explanation of why the observed deficits were related to the March 13, 2002 employment injury. Moreover, neither the Act nor its implementing regulations provides for a schedule award for impairment to the back or to the body as a whole.[10]

In an August 2, 2008 report, Dr. Fritzhand stated that on examination appellant exhibited tenderness on palpation of the left posterior iliac crest and noted that he had difficulty forward bending at the waist to 70 degrees. Appellant also had limited motion on extension and left lateral flexion. Dr. Fritzhand stated that there was evidence of nerve root damage secondary to appellant's injury as muscle strength was decreased over the dorsiflexors of the left ankle, atrophy was noted over the left leg and there was sensory loss involving the left lower extremity. Referencing Tables 16-10, 16-11 and 17-37 and Figures 17-8 and 17-9 of the A.M.A., *Guides*, Dr. Fritzhand concluded that appellant had a 31 percent left leg impairment based on sensory and strength deficits.[11]

Dr. Fritzhand's opinion is of limited probative value regarding whether appellant had work-related leg impairment because he did not provide a rationalized opinion that the observed impairment associated with the sciatic nerve was related to residuals of the March 13, 2002 employment. He did not explain how the March 13, 2002 injury could have contributed to such impairment. Dr. Fritzhand did not provide any notable discussion of appellant's clinical findings or his history of diagnostic testing results. For example, he did not mention or comment on the significance of the most recent MRI scan testing, *i.e.*, the November 15, 2006 testing that showed some degeneration at L4-5 and L5-S1 but no focal disc herniation or nerve root swelling.

[9] *See* A.M.A., *Guides* 384.

[10] *See supra* note 8.

[11] *See* A.M.A., *Guides* 482, 484 and 551-52.

Several physicians diagnosed appellant with left leg radiculopathy but this diagnosis appears to have been based more on appellant's reported symptoms than on objective medical evidence.

In addition, the record contains evidence that appellant did not have permanent leg impairment due to his March 13, 2002 employment injury. In a January 6, 2009 Dr. Sheridan reported that appellant had an essentially normal examination of the back and legs. He pointed out that November 15, 2006 MRI scan testing showed some degeneration at L4-5 and L5-S1 but no focal disc herniation or nerve root swelling. Dr. Sheridan concluded that there was no evidence of radiculopathy affecting the lower extremities and therefore appellant had no impairment of his lower extremities. On February 6, 2009 the Office medical adviser indicated that he agreed with this assessment.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has permanent leg impairment, due to his March 13, 2002 employment injury, which would entitle him to schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 12, 2009 decision is affirmed.

Issued: November 19, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board