

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

D.B., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
East Austin, TX, Employer)

**Docket No. 12-1150
Issued: February 1, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 2, 2012 appellant filed a timely appeal from a December 13, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) granting him a schedule award. 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 schedule award decision.

ISSUE

The issue is whether appellant has more than a 13 percent permanent impairment of the left lower extremity.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated November 4, 1997, the Board affirmed OWCP's February 15, 1995 decision denying appellant's request for reconsideration of its termination of his compensation on the grounds that it was untimely filed

¹ 5 U.S.C. § 8101 *et seq.*

and did not establish clear evidence of error.² In a decision dated August 1, 2007, the Board set aside a January 25, 2007 decision granting him a schedule award for a three percent permanent impairment of the left leg.³ The Board found that the opinion of the second opinion examiner was insufficient to establish the extent of any permanent impairment and remanded the case for OWCP to obtain an opinion resolving the issue. By decision dated July 18, 2011, the Board set aside an April 19, 2010 decision finding that appellant had not established a permanent impairment to a scheduled member or function.⁴ The Board noted that Dr. William W. Janes, a Board-certified physiatrist and OWCP referral physician, found that appellant had a 10 percent whole person impairment due to his hernia. Dr. Janes further found an impairment of the ilioinguinal nerve but determined that this impairment was included in the hernia impairment under Table 6-10 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009). An OWCP medical adviser reviewed Dr. Janes' report and determined that FECA did not provide an award for a hernia and that the A.M.A., *Guides* did not provide a lower extremity rating for an ilioinguinal nerve impairment. The Board, however, concluded that it was unclear whether Dr. Janes found either a lower extremity impairment or an impairment of the testicles due to the accepted work injury. The Board remanded the case for OWCP to obtain an opinion resolving the issue of whether appellant had a permanent impairment of the lower extremity or other scheduled member. The facts and circumstances as set forth in the prior decisions are hereby incorporated by reference.

On October 21, 2011 OWCP referred appellant back to Dr. Janes for a second opinion examination. It requested that the physician address whether he had an abdominal or lower extremity impairment.

In a report dated November 7, 2011, Dr. Janes discussed appellant's history of two hernia surgeries. He noted that appellant "continues to have pain in the inguinal area that radiates into the testicular area and significantly affects his activities of daily living." Dr. Janes stated:

"On examination of his left inguinal area, [appellant] does have a scar that is well healed. He does have decreased sensation to fine touch in the area of the scar into the groin area and has tenderness in the left testicular area. Pain in his groin is increased with certain movement. In his lower extremities, [appellant] has no edema. He had normal motor strength. [Appellant] is able to ambulate without difficulty."

² Docket No. 95-2200 (issued November 4, 1997). OWCP accepted that appellant, then a 34-year-old janitor, sustained abdominal strain, an inguinal hernia, left ilioinguinal nerve entrapment and left scrotal varices due to an October 21, 1985 work injury. By decision dated September 14, 1992, it terminated his compensation after finding that he had no further disability causally related to his accepted work injury.

³ Docket No. 07-817 (issued August 1, 2007).

⁴ Docket No. 10-2168 (issued July 18, 2011).

Dr. Janes diagnosed an inguinal hernia and ilioinguinal nerve entrapment with chronic neurogenic pain. Referencing the sixth edition of the A.M.A., *Guides*, he stated:

“Using Chapter 13 on page 344 an example patient is very similar to [appellant]. The example patient has undergone an inguinal hernia repair with severe burning pain in the ilioinguinal nerve. It says to use Table 13-20 to rate this type of case. Therefore, using Table 13-20, [appellant] is a Class 3 impairment which gives him a [five percent] whole person impairment.”

On December 6, 2011 an OWCP medical adviser reviewed Dr. Janes’ report and concurred with his finding that appellant had a Class 3, or five percent impairment of the ilioinguinal nerve according to Table 13-20 on page 344 of the sixth edition of the A.M.A., *Guides*. He converted the 5 percent whole person impairment to a 13 percent impairment of the left lower extremity using Table 16-10 on pages 530-31. The medical adviser found that the prior award of 3 percent of the left lower extremity for pain was included in the 13 percent left lower extremity impairment and thus determined that appellant was entitled to an additional award for a 10 percent impairment of the left lower extremity.

By decision dated December 9, 2011, OWCP modified its April 19, 2010 decision and found that appellant was entitled to an increased schedule award. In a decision dated December 13, 2011, it granted him a schedule award for an additional 10 percent impairment of the left lower extremity. The period of the award ran for 28.8 weeks from November 7, 2011 to May 26, 2012.

On appeal, appellant contends that he is entitled to compensation for lost wages, beginning September 20, 1992 and continuing to the present, and is also entitled to an additional schedule award.

LEGAL PRECEDENT

The schedule award provision of FECA⁵ and its implementing federal 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, 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.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

ANALYSIS

OWCP accepted that appellant sustained abdominal strain, an inguinal hernia, left ilioinguinal nerve entrapment and left scrotal varices due to an October 21, 1985 work injury. In an April 19, 2010 decision, it denied his schedule award claim after finding that FECA did not provide a schedule award for a hernia. On July 18, 2011 the Board set aside the April 19, 2010 decision. The Board noted that Dr. Janes determined that appellant had an impairment of the ilioinguinal nerve and loss of sensation in the testicles in addition to finding an impairment due to his hernia. The Board remanded the case for OWCP to obtain an opinion resolving the issue of whether he had a lower extremity or testicular impairment due to the accepted work injury.

On remand, OWCP requested that Dr. Janes reevaluate appellant and provide an opinion regarding whether he had an impairment of the lower extremity. On November 7, 2011 Dr. Janes discussed appellant's current complaints of inguinal area pain radiating into the testicles. On examination he found loss of sensation around the left inguinal area and tenderness in the area of the left testicle. Dr. Janes further measured full motor strength of the lower extremity with no edema or loss of movement. He applied Table 13-20 in Chapter 13 of the A.M.A., *Guides*, relevant to determining impairments of the central and peripheral nervous system and determined that appellant had a Class 3 impairment of the ilioinguinal nerve, which yielded a five percent whole person impairment. An OWCP medical adviser reviewed Dr. Janes' report and concurred with his finding of a five percent whole person impairment of the ilioinguinal nerve. He used Table 16-10 to convert the 5 percent whole person impairment to a 13 percent impairment of the left lower extremity. The medical adviser found that the prior award of 3 percent of the left lower extremity for pain was included in the 13 percent left lower extremity impairment. He concluded that appellant had an additional 10 percent impairment of the left lower extremity.

Neither Dr. Janes nor the medical adviser, however, explained how appellant's impairment of the ilioinguinal nerve affected his lower extremity. Figure 16-3 of the A.M.A., *Guides* provides the sensory nerves of the lower extremity.¹⁰ It does not indicate that the ilioinguinal nerve extends into the lower extremity. Dr. Janes found normal clinical findings on examination of the lower extremity with no loss of sensation. He determined, however, that appellant had a loss of sensation in the testicular area.

In *T.T.*, a claimant experienced right inguinal and scrotal pain following hernia repair.¹¹ The Board noted that the claimant could receive an award for a testicular impairment and that

⁹ A.M.A., *Guides* 494-531.

¹⁰ *Id.* at 537.

¹¹ *T.T.*, Docket No. 10-1841 (issued April 19, 2011).

Chapter 7 of the sixth edition of the A.M.A., *Guides* contained provisions for rating an impairment of the testicles.¹² The Board further found that Chapter 3 provided a method for rating pain-related impairments that could not be rated under the other chapters.¹³ As in *T.T.*, the current medical record is insufficient to establish whether appellant has a ratable impairment under the sixth edition of the A.M.A., *Guides*. On remand, OWCP should obtain a medical opinion regarding whether appellant has an impairment of the testicles or of the left lower extremity under the sixth edition of the A.M.A., *Guides*. After such further development as OWCP deems necessary, it shall issue an appropriate decision on appellant's claim.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: February 1, 2013
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹² 20 C.F.R. § 10.404; *see e.g.*, A.M.A., *Guides* 146-49.

¹³ A.M.A., *Guides* 39.