United States Department of Labor
Employees' Compensation Appeals Board

T.V., Appellant	)	
and	)	**Docket No. 06-976**
	)	**Issued: February 9, 2007**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Lubeck, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 20, 2006 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated November 10, 2005. 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 has more than 30 percent impairment of his left lower extremity for which he received a schedule award.

FACTUAL HISTORY

On July 24, 2003 appellant, then a 63-year-old custodian, filed a traumatic injury claim alleging that he broke his left hip due to a fall in the performance of duty on that date. Dr. Mimi Zumwalt, a Board-certified orthopedic surgeon, performed an open reduction and antegrade intramedullary nailing using the Zimmer system on July 24, 2003 to repair appellant's left hip peritrochanteric fracture with comminution and displacement. The Office accepted appellant's

claim for left hip fracture on July 25, 2003. Appellant received continuation of pay through September 7, 2003 and the Office entered him on the periodic rolls on October 8, 2003.

Appellant returned to regular duty on July 17, 2004. He requested a schedule award on October 13, 2004. In a report dated July 19, 2004, a physician whose signature is illegible found that appellant had 15 percent whole person impairment in accordance with the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.* The physician found that appellant had a Trendelenburg gait and use of a shoe lift. He also noted that appellant had decreased range of motion and tenderness to palpation with muscle guarding.

Appellant filed a recurrence of disability claim on March 24, 2005 alleging that he was totally disabled due to his left hip condition from March 17 through 23, 2005. The Office accepted this claim on August 25, 2005.

In a report dated March 22, 2005, Dr. Zumwalt noted that appellant had a 1½ to 2-inch leg length discrepancy, a small Trendelenburg gait and awarded appellant 15 percent impairment. Appellant underwent a functional capacity evaluation on March 25, 2005 which noted that he demonstrated a left leg limp, loss of range of motion of the left hip consisting of 80 degrees of flexion, and 15 degrees of abduction and 5 degrees of knee extension due previous knee surgeries.[1]

In a letter dated April 14, 2005, the Office requested an evaluation of appellant's left lower extremity in accordance with the fifth edition of the A.M.A., *Guides*.[2] Appellant submitted a report dated May 24, 2005 from Dr. Gerald Hill, a general practitioner, who found that appellant had an asymmetrical gait, a mild limp, mild atrophy of the left quadriceps and that his left calf was three centimeters smaller than his right. Dr. Hill also noted that appellant's left leg was only two centimeters shorter than his right and that appellant had mildly reduced range of motion of his left hip. He stated that appellant had reached maximum medical improvement as of his examination. Dr. Hill noted that appellant's permanent impairment could be calculated by two methods under the A.M.A., *Guides*. He stated that by combining appellant's loss of range of motion and loss of leg length there was 11 percent impairment of the left lower extremity. Dr. Hill also noted that in accordance with the A.M.A., *Guides* appellant had 18 percent left lower extremity impairment due to gait derangement. He opined that this higher impairment rating more accurately reflected the degree of appellant's impairment and was appropriate.

The Office medical adviser reviewed appellant's claim for a schedule award on September 6, 2005. He found that appellant had 19 percent impairment of his left lower extremity as his left leg was two inches shorter than his right. The Office medical adviser also found that appellant had 13 percent impairment due to 3 centimeters of calf atrophy. He

[1] This report was not signed or reviewed by a physician. It is well established that, to constitute competent medical opinion evidence, the medical evidence submitted must be signed by a qualified physician. *Vickey C. Randall*, 51 ECAB 357, 360 (2000); *Arnold A. Alley*, 44 ECAB 912, 921 (1993).

[2] Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

combined these impairments to reach 30 percent impairment of the left lower extremity. The Office medical adviser stated that Dr. Hill found that appellant had an 11 percent impairment of the left lower extremity based on gait disturbance. He concluded that his impairment rating was more favorable to appellant and that the A.M.A., *Guides* recommended that gait disturbance not be used for impairment calculations when other methods were available.

By decision dated November 10, 2005, the Office granted appellant a schedule award for 30 percent impairment of his left lower extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing 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, 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.[5]

The A.M.A., *Guides* provide that in evaluating lower extremity impairment, it is the responsibility of the evaluating physician to explain in writing why a particular method to assign the impairment rating was chosen. When uncertain about which method to choose, the evaluator should calculate the impairment using different alternatives and choose the method or combination of methods that gives the most clinically accurate impairment rating.[6]

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant'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.[7]

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] A.M.A., *Guides* (5th ed. 2001).

[6] *Richard F. Williams*, 55 ECAB 343, 347 (2004).

[7] *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

ANALYSIS

Dr. Hill, a general practitioner, examined appellant on May 24, 2005 and reported his findings including left calf atrophy of three centimeters, leg length discrepancy of two centimeters and mild gait derangement. He noted that appellant had mild loss of range of motion of his left hip as well as mild quadriceps atrophy, but did not provide measurements for these impairments. Dr. Hill combined appellant's 2 centimeter left leg length discrepancy which is a 5 percent impairment rating[8] with the unspecified loss of range of hip motion to reach 11 percent impairment. However, he opined that appellant's impairment rating should be based instead on gait derangement. Dr. Hill stated that appellant had 18 percent impairment of the left lower extremity due to mild antalgic limp which was 7 percent impairment of the whole person.[9] While Dr. Hill stated that this was the proper impairment to use as it provided the higher degree of impairment, section 17.2c of the fifth edition of the A.M.A., *Guides*, precludes the use of gait derangement to calculate impairment if a more specific method is available to assess the impairment.[10] Under Chapter 17, there are more specific methods available. The Board further notes as Dr. Hill failed to provide a detailed description of appellant's impairment including any loss of range of motion of his accepted left hip condition and his preexisting left knee condition[11] as well as the degree of left quadriceps atrophy, such that a claims examiner or other reviewing the file would be able to clearly visualize the impairment with its resulting restrictions and limitations.

The Office medical adviser reviewed Dr. Hill's report on September 6, 2005 and awarded appellant 19 percent impairment for a limb length discrepancy of two inches rather than two centimeters as found in Dr. Hills' report. A two centimeter limb length discrepancy is 5 percent impairment of the left lower extremity rather than 19 percent impairment.[12] The Office medical adviser also found that appellant had 13 percent impairment of his left lower extremity due to 3 centimeters of calf atrophy.[13] The Office medical adviser noted that appellant was not entitled to an impairment rating based on gait derangement. On remand, the Office should refer appellant for a second opinion evaluation to determine the extent of his permanent impairment under the A.M.A., *Guides*, considering the length of his left leg, range of motion of his left hip and knee and any atrophy of his calf and thigh. After this and such other development as the Office deems necessary the Office should issue an appropriate decision.

[8] A.M.A., *Guides* 528, Table 17-4.

[9] *Id*. at 529, Table 17-5, 527, Table 17-3.

[10] *Rose V. Ford*, 55 ECAB 449, 454-55 (2004).

[11] It is well established that in determining entitlement to a schedule award, preexisting impairment to the scheduled member is to be included. *Michael C. Milner*, 53 ECAB 446 (2002).

[12] A.M.A., *Guides* 528, Table 17-4.

[13] *Id.* at 530, Table 17-6.

CONCLUSION

The Board finds that this case is not in posture for decision as the record lacks a clear description of appellant's impairment for schedule award purposes, and as neither appellant's physician nor the Office medical adviser provided an accurate impairment rating regarding the information included in the record in accordance with the A.M.A., *Guides*. On remand the Office should further development the medical evidence and issue an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2005 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: February 9, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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