United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 07-81**
	)	**Issued: May 21, 2007**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, Ayer, MA, Employer	)	

Appearances:
Jeffrey Zeelander, Esq., for the appellant
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 October 10, 2006 appellant filed a timely appeal of a March 30, 2006 merit decision of the Office of Workers' Compensation Programs with respect to a schedule award. 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 a 14 percent permanent impairment of his right leg.

FACTUAL HISTORY

On January 23, 2002 appellant, then a 35-year-old laundry plant specialist, filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries in an altercation with a prisoner on that date. The Office accepted the claim for lumbar and cervical strain. The claim was later accepted for displaced lumbar intervertebral disc. Appellant underwent an L4-5 laminectomy on August 22, 2002. He returned to work on November 12, 2002.

In a report dated September 26, 2005, Dr. Emmanuel Jacob, a physiatrist, provided a history and results on examination. He diagnosed chronic neck pain with limited motion, chronic low back pain with right radiculopathy and status post lumbar laminectomy. With respect to impairment for the right leg, Dr. Jacob referred to Table 16-10 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Jacob identified the L5 nerve root and graded the impairment for sensory deficit/pain at 40 percent of a maximum 8 percent, or a 3.2 percent impairment. He also identified Tables 16-11 and 16-13 and found a motor deficit impairment of 7 percent, stating "right ankle dorsiflexion is 4/5 is equivalent to 20 percent motor deficit and 25 percent maximum." Dr. Jacob also found a seven percent impairment for motor deficit in the right arm and he opined that appellant had a nine percent whole person impairment for sexual dysfunction under Table 13-21 and a three percent whole person impairment for pain under section 18.3(d) of the A.M.A., *Guides.*

The case was sent to an Office medical adviser for review. In a report dated March 17, 2006, the Office medical adviser opined that appellant had a 12 percent leg impairment due to weakness under Tables 17-8 and 17-7. In addition, the medical adviser opined that appellant had a two percent leg impairment for sensory deficit under Table 17-37. With respect to additional impairments, the medical adviser noted that the Office had not accepted cervical stenosis. He opined that none of the upper extremity findings were related to the accepted cervical strain. The date of maximum medical improvement was reported as September 26, 2005.

By decision dated March 30, 2006, the Office issued a schedule award for a 14 percent permanent impairment to the right leg. The period of the award was 40.32 weeks from September 26, 2005. An accompanying memorandum noted that the Office had not accepted cervical stenosis or sexual difficulties as causally related to the employment injury and there was no rationalized medical opinion on causal relationship.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[1] and section 10.404 of the implementing federal regulation,[2] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[3]

[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.404.

[3] *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

ANALYSIS

Appellant submitted a September 26, 2005 report from Dr. Jacob regarding permanent impairment. With respect to the right leg, Dr. Jacob's opinion as to the degree of permanent impairment under the A.M.A., *Guides* is of little probative value. For sensory deficit/pain, he refers to Table 16-10, which is used to grade impairments for the upper extremities.[4] While Table 16-10 may be used for lower extremities, the evaluator must be directed to Table 16-10 for an appropriate table. Dr. Jacob refers to the L5 nerve root, but it is not clear what table he was attempting to use. The L5 nerve root, for example, is found in Table 15-18, for nerve root impairments affecting the lower extremity.[5] This table provides a five percent maximum for sensory deficit/pain, not the eight percent noted by Dr. Jacob. For motor deficit, Dr. Jacob again identifies upper extremity tables, without identifying the appropriate tables for lower extremity impairment and explaining how the tables were applied.

The Office medical adviser identified Table 17-8 for impairments due to lower extremity muscle weakness.[6] He graded the impairment under Table 17-7 at Grade 4, described as "active movement against gravity with some resistance."[7] A Grade 4 impairment for ankle dorsiflexion, as noted by the medical adviser, is a 12 percent leg impairment under Table 17-8. With regard to sensory deficit/pain, the medical adviser referred to Table 17-37 and the sural and lateral plantar nerves.[8] The A.M.A., *Guides* indicate that the impairment should be graded under Table 16-10, and the medical adviser graded the impairment resulting in a two percent leg impairment for sensory deficit/pain.

Based on the evidence of record, the weight of the evidence with respect to the degree of permanent impairment in the right leg is represented by the Office medical adviser. He identified appropriate tables and explained how the A.M.A., *Guides* were applied, while Dr. Jacob did not provide a reasoned medical opinion.

The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For the leg, the maximum number of weeks of compensation is 288 weeks. Since appellant's impairment was 14 percent, he is entitled to 14 percent of 288 weeks, or 40.32 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.[9] In this case, the Office medical adviser properly concluded that the date of maximum medical improvement was the date

[4] A.M.A., *Guides* 482, Table 16-10.

[5] *Id.* at 424, Table 15-18.

[6] *Id.* at 532, Table 17-8.

[7] *Id.* at 531, Table 17-7.

[8] *Id.* at 552, Table 17-37. For the sural nerve, the maximum sensory impairment is a two percent leg impairment, and for the lateral plantar nerve, the maximum is five percent.

[9] *Albert Valverde*, 36 ECAB 233, 237 (1984).

of examination by Dr. Jacob. The award therefore properly runs for 40.32 weeks commencing on September 26, 2005.

On appeal, appellant's primary concern appears to be the Office's failure to issue a schedule award for the right arm or for sexual dysfunction. It is well established that a permanent impairment must be causally related to an accepted employment injury.[10] There is no probative medical evidence on causal relationship between a right arm impairment or a sexual dysfunction impairment and the January 23, 2002 employment injury. As noted by the Office, the claim was not accepted for a cervical injury other than cervical strain; the accepted lumbar conditions were lumbar strain and displaced intervertebral disc. Dr. Jacob did not provide any opinion on causal relationship between a right arm impairment or a sexual dysfunction impairment and the employment injury. In the absence of probative medical evidence on causal relationship, the evidence is not sufficient to warrant a schedule award for a right arm or sexual dysfunction impairment.

CONCLUSION

The evidence of record does not establish that appellant has more than a 14 percent right leg permanent impairment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 30, 2006 is affirmed.

Issued: May 21, 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

[10] *Rosa Whitfield Swain*, 38 ECAB 368 (1987).