United States Department of Labor
Employees' Compensation Appeals Board

R.V., Appellant	)	
and	)	**Docket No. 10-1791**
	)	**Issued: June 28, 2011**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Shreveport, LA, Employer	)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

Appellant, a 55-year-old mail handler, has an accepted claim for lumbar strain and intervertebral disc disorder with myelopathy, which arose on March 30, 2006. He returned to work on August 3, 2006 and resumed his full duties on December 9, 2006. Appellant received appropriate wage-loss compensation. On August 17, 2009 he filed a claim for a schedule award.

In a report dated July 16, 2009, Dr. Austin W. Gleason, III, a Board-certified orthopedic surgeon, diagnosed degenerative disc disease at L2-3, L3-4 and L4-5 with mild spinal stenosis and lateral recess stenosis. His report included physical examination findings with respect to the spine and lower extremities. Dr. Gleason also performed a neurological evaluation of the lower extremities. He also reviewed a February 2009 lumbar magnetic resonance imaging scan and medical records from appellant's treating physician, Dr. Marco A. Ramos, who had recommended surgical intervention.[1] Appellant reportedly was unwilling to proceed with the proposed laminectomy and microdisectomy at L3-4 and L4-5. Dr. Gleason noted that he would

[1] Dr. Gleason also noted that over the past several years appellant had undergone extensive treatment for severe depression.

not recommend surgery. He found 9 percent impairment of the "total body" based on multilevel degenerative discs with stenosis.[2]

The Office referred the case to Dr. H. Mobley, the district medical adviser, who reviewed Dr. Gleason's impairment rating. It asked Dr. Mobley to calculate permanent impairment of the lower extremities.[3] In a report dated October 5, 2009, Dr. Mobley summarized Dr. Gleason's July 16, 2009 report and stated that "[b]ased upon the report … and the sixth edition [of the A.M.A.,] *Guides*, there is no job-related impairment of the lower extremities."

By decision dated October 15, 2009, the Office denied appellant's claim for a schedule award. It based its decision on Dr. Mobley's October 5, 2009 report.

Pursuant to appellant's request, the Branch of Hearings & Review considered the written record, including an addendum to Dr. Gleason's July 16, 2009 impairment rating. The addendum noted six percent impairment of the right lower extremity due to "chronic varicosities and edema, with permanent enlargement of the right calf." The hearing representative did not refer Dr. Gleason's addendum to the district medical adviser for review.

In a decision dated May 14, 2010, the Branch of Hearings & Review affirmed the Office's October 15, 2009 decision. The hearing representative found that the evidence did not establish that appellant's lower extremity peripheral vascular disease was causally related to his accepted lumbar condition. Appellant filed the instant appeal on June 24, 2010. The Board has jurisdiction over the merits of the schedule award claim.[4]

The case is not in posture for decision. First, the district medical adviser, Dr. Mobley, did not explain why Dr. Gleason's July 16, 2009 examination results ostensibly did not support a finding of lower extremity impairment under the sixth edition of the A.M.A., *Guides* (2008). He should have provided rationale for his opinion.[5] But instead the district medical adviser merely summarized Dr. Gleason's findings and then concluded "there [was] no job-related impairment of the lower extremities." Second, Dr. Gleason's July 16, 2009 addendum should have been referred to the district medical adviser for review.[6]

As noted, the hearing representative dismissed Dr. Gleason's finding of six percent right lower extremity impairment because there was no indication that appellant's peripheral vascular

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[2] Dr. Gleason based his rating on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2008), which is applicable to schedule award decisions issued on or after May 1, 2009. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Example 1 (January 2010).

[3] Neither the Federal Employees' Compensation Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole. 5 U.S.C. § 8107(c) (2006); 20 C.F.R. § 10.404(a) (2010); *see Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

[4] 20 C.F.R. §§ 501.2(c) and 501.3. Appellant requested oral argument before the Board. Given the disposition of the current appeal as discussed *infra*, the Board in its discretion denies appellant's request for oral argument. *See* 20 C.F.R. § 501.5(a), (b).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6d(1) (January 2010).

[6] *Id.* at Chapter 2.808.6d.

disease was causally related to the accepted lumbar condition. Regarding causal relationship, the Board notes that not all impairments to a scheduled member need be employment related. Under certain circumstances, previous impairments may be included in calculating the percentage of loss.[7] Appellant was hospitalized in April 2007 for complaints of back pain and chest pain. The April 15, 2007 discharge summary noted evidence of edema in the right lower extremity, which reportedly dated back over three years. This evidence suggests that the peripheral vascular disease Dr. Gleason rated likely predated appellant's March 30, 2006 employment injury. As such, it cannot simply be dismissed as nonemployment related when determining entitlement to a schedule award.

Once the Office undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.[8] As the district medical adviser's October 5, 2009 analysis is incomplete, the case will be remanded to the Office for further development. After the Office has developed the case record to the extent it deems necessary, a *de novo* decision shall by issued.

IT IS HEREBY ORDERED THAT the May 14, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: June 28, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[7] *Id.* at Chapter 2.808.7a(2); *see R.D.*, 59 E.C.A.B. 127, 130 (2007).

[8] *Richard F. Williams*, 55 ECAB 343, 346 (2004).