

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

M.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Independence, OH, Employer**

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**Docket No. 10-2277
Issued: June 13, 2011**

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, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 10, 2010 appellant, through his attorney, filed a timely appeal from March 23 and August 11, 2010 merit decisions of the Office of Workers' Compensation Programs denying his claim for a schedule award. Pursuant to the Federal Employees' Compensation Act¹ 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 sustained a permanent impairment of the lower extremities causally related to his August 14, 2007 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 30, 2007 appellant, then a 53-year-old custodian, filed a claim alleging that on August 14, 2007 he sustained pain in his left buttocks radiating into his left leg while shoveling compost. The Office accepted the claim for lumbar subluxation.²

On June 17, 2009 Dr. Eric Macanga, a chiropractor, found that appellant had reached maximum medical improvement and discharged him from care. On July 16, 2009 appellant filed a claim for a schedule award. On July 21, 2009 the Office requested that Dr. Macanga address whether appellant had an employment-related permanent impairment of the lower extremities in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*).

In an August 11, 2009 impairment evaluation, Dr. Macanga discussed appellant's complaints of continuing pain in the posterior left thigh and hip. He found that he had a seven percent impairment of the left lower extremity pursuant to the A.M.A., *Guides* due to left hip strain/tendinitis.

On October 21, 2009 the Office advised Dr. Macanga that it had accepted appellant's claim for lumbar subluxation rather than a left strain/tendinitis.

On November 30, 2009 Dr. Macanga determined seven percent impairment of the left lower extremity due to lumbar intersegmental dysfunction according to Table 16-1 on page 495 and Table 16-9 on page 520 of the A.M.A., *Guides*. On December 16, 2009 an Office medical adviser noted Table 16-1 on page 495 of the A.M.A., *Guides* did not provide a definition of impairment class but did not show specific impairment ratings.

By letter dated January 19, 2010, the Office referred appellant to Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated February 10, 2010, Dr. Ghanma discussed appellant's complaints of low back pain radiating into his left lower extremity. He found no lumbar spasm, straight leg raising to 80 degrees bilaterally, no reflexes at the knees and ankles, left calf atrophy and a positive Waddell's sign to right rotation and leg lifts bilaterally. Dr. Ghanma determined that appellant had full motor strength in the lower extremities except for 4/5 weakness of the left hip flexor. He stated:

"My diagnosis is that [appellant] has left calf atrophy related to left sciatica. [Appellant] also has some mild weakness of left hip flexion, which is difficult to explain based on any affection of nerve roots below the L3 level.

"There [are] no current examination findings consistent with lumbar subluxation and there is no evidence to support that any lumbar subluxation is causing weakness or sensory deficits in [appellant's] lower extremities. The motor and

² By decision dated November 2, 2007, OWCP denied appellant's claim after finding that the medical evidence was insufficient to show that he sustained a condition due to the identified work incident. On February 22, 2008 an Office hearing representative reversed the November 2, 2007 decision and accepted the claim for lumbar subluxation.

sensory complaints that he has are more likely related to sciatica, a [nonallowed] condition of the claim.”

Dr. Ghanma asserted that appellant had no impairment of the right lower extremity as there were “no current examination findings consistent with any abnormality of the right lower extremity whether due to motor or sensory dysfunction or to any pain complaints.” He found an impairment due to atrophy of the left calf and left hip flexion weakness but opined that the impairment of the left lower extremity was unrelated to the accepted condition. Dr. Ghanma asserted that a lumbar subluxation would not cause appellant’s motor or sensory complaints or the physical findings on examination. He opined that appellant reached maximum medical improvement six to eight weeks post injury.

On March 10, 2010 OWCP’s medical adviser concurred with Dr. Ghanma’s finding that appellant had no impairment of the lower extremities. Dr. Ghanma noted that there was no magnetic resonance imaging scan study or electromyogram evidence of a nerve impairment showing a lower extremity impairment consistent with the sixth edition of the A.M.A., *Guides*.

By decision dated March 23, 2010, OWCP denied appellant’s claim for a schedule award. It found that the medical evidence failed to show a permanent impairment to a scheduled member due to his accepted employment injury.

On March 20, 2010 appellant, through his attorney, requested a telephone hearing. At the hearing, held on June 16, 2010, counsel argued that Dr. Ghanma improperly failed to accept that that appellant sustained a lumbar subluxation.

By decision dated August 11, 2010, an Office hearing representative affirmed the March 23, 2010 decision.

LEGAL PRECEDENT

FECA provides compensation for both disability and physical impairment. “Disability” means the incapacity of an employee, because of an employment injury, to earn the wages the employee was receiving at the time of injury.³ In such cases, FECA compensates an employee for loss of wage-earning capacity. In cases of physical impairment FECA, under section 8107(a), compensates an employee, pursuant to a compensation schedule, for the permanent loss of use of certain specified members of the body, regardless of the employee’s ability to earn wages.⁴

As a claimant seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, it is thus the claimant’s burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of his or her employment injury

³ *Lyle E. Dayberry*, 49 ECAB 369 (1998).

⁴ *Renee M. Straubinger*, 51 ECAB 667 (2000).

entitling him or her to a schedule award.⁵ The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury.⁶ The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁷

ANALYSIS

OWCP accepted that appellant sustained a lumbar subluxation on August 14, 2007 in the performance of duty. On August 11, 2009 Dr. Macanga, a chiropractor, found that appellant had a seven percent impairment of the left lower extremity due to left hip strain/tendinitis. On November 30, 2009 he again found a left lower extremity impairment of seven percent due to lumbar intersegmental dysfunction. The opinion of a chiropractor, however, regarding a permanent impairment of a scheduled extremity or other member of the body is beyond the scope of the statutory limitation of a chiropractor's services.⁸ Dr. Macanga's reports are thus of no probative value with regards to the extent of any permanent impairment.

OWCP referred appellant to Dr. Ghanma for an impairment evaluation. On February 10, 2010 Dr. Ghanma noted that appellant experienced pain radiating from his low back to his lower extremity. He listed findings on examination of left calf atrophy, a positive Waddell's sign to right rotation and leg lifts bilaterally and 4/5 weakness of the left hip flexor. Dr. Ghanma diagnosed left sciatica causing atrophy of the left calf and weakness of the left hip flexor of uncertain etiology. He found no evidence of lumbar subluxation or evidence of any weakness or sensory loss of the lower extremities resulting from a lumbar subluxation. Dr. Ghanma determined that appellant had no right lower extremity impairment based on the findings on examination. He attributed the left lower extremity impairment resulting from the left calf atrophy and left hip flexor weakness to sciatica, which he noted was not accepted as work related. Dr. Ghanma explained that a lumbar subluxation would not cause appellant's subjective complaints or the findings on examination. On March 10, 2010 an OWCP medical adviser concurred with Dr. Ghanma's findings. The Board finds that Dr. Ghanma's opinion is based on a proper review of the medical history and thorough findings on physical examination. Dr. Ghanma provided rationale for his opinion by explaining that the physical findings on examination and appellant's subjective complaints were not consistent with a lumbar subluxation. He concluded that he had no impairment under the A.M.A., *Guides* due to his accepted condition. The Board finds that Dr. Ghanma's opinion represents the weight of the evidence and establishes that appellant does not have an employment-related ratable impairment.

⁵ See *D.H.*, 58 ECAB 358 (2007); *Veronica Williams*, 56 ECAB 367 (2005).

⁶ *Manuel Gill*, 52 ECAB 282 (2001).

⁷ *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

⁸ *George E. Williams*, 44 ECAB 530 (1993); see also *Pamela K. Guesford*, 53 ECAB 726 (2002) (a chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation and his or her opinion is not considered competent medical evidence in evaluation of other disorders, including those of the extremities, although these disorders may originate in the spine).

CONCLUSION

The Board finds that appellant has not established that he sustained a permanent impairment of the lower extremities causally related to his August 14, 2007 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 11 and March 23, 2010 are affirmed.

Issued: June 13, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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