United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 13-1212**
	)	**Issued: September 20, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Carol Stream, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 22, 2013 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) decision dated February 27, 2013 which denied appellant's claim for a schedule award. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established permanent impairment to his left arm warranting a schedule award.

FACTUAL HISTORY

On February 11, 1998 appellant, then a 27-year-old letter carrier, slipped and fell while descending stairs and injured his left shoulder and arm. OWCP accepted his claim for closed

[1] 5 U.S.C. §§ 8101-8193.

dislocation of the left shoulder with calcifying tendinitis. Appellant stopped work on February 11, 1998 and returned to work limited duty on February 12, 1998.

Appellant was initially treated by Dr. Joseph Sheehan, a Board-certified orthopedic surgeon, for a dislocated left shoulder which occurred at work. In duty status reports dated February 11 and June 15, 1998, Dr. Sheehan noted that appellant could return to work full time subject to restrictions and resume regular duties on June 15, 1998. Reports dated May 4, 1998 to February 26, 1999, noted appellant's complaint of persistent symptoms in the left shoulder. Appellant sought treatment from Dr. Robert Levi, a Board-certified orthopedic surgeon, from March 22 to October 12, 1999, who diagnosed impingement syndrome and tendinitis of the left shoulder. Dr. Levi noted that a February 22, 1999 magnetic resonance imaging scan of the left shoulder revealed thickening of the glenohumeral ligament, anterior tilting of the acromion with fluid along the coracoacromial ligament and biceps with tendinitis of the supraspinatus tendon. He opined that the impingement syndrome and tendinitis of the left shoulder were related to the February 11, 1998 work injury. On October 20, 1999 Dr. Levi returned appellant to work full time with restrictions. Appellant was treated by Dr. Shahid Ansari, a Board-certified general surgeon, from October 25, 1999 to August 2000. On February 23, 2000 Dr. Ansari injected xylocaine into the left shoulder joint for localized tenderness.

The record reflects that appellant left work in May 2003.[2]

On July 31, 2012 appellant filed a claim for a schedule award.

On August 7, 2012 OWCP requested that appellant submit a detailed report from a treating physician which provided an impairment evaluation pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3] It requested an opinion as to whether he had reached maximum medical improvement; a diagnosis upon which the impairment was based, including surgery; a detailed description of objective and subjective complaints; a detailed description of any permanent impairment; a final rating of permanent impairment and a discussion of the applicable criteria and tables in the A.M.A., *Guides,* sixth edition.

In a July 24, 2012 report, Dr. Michael J. Heatwole, a chiropractor, treated appellant for pain in both shoulders and upper thoracic spine. He stated that appellant experienced a flare up of an old injury of February 11, 1998, with weakness with activities involving both shoulders. Dr. Heatwole noted that appellant's condition began on February 11, 1998 when he fell while delivering mail and injured his left shoulder. Appellant indicated that his condition had recently worsened and he experienced difficulty using the shoulders for more than a couple of minutes due to pain when driving, shaving or carrying items. Dr. Heatwole noted findings on range of motion of the shoulder was mildly decreased globally bilaterally; moderate pain of both shoulders on palpation; spasm in the shoulders bilaterally; spasm of the muscles of the upper back and moderate articular fixation of the upper thoracic spine. He noted shoulder flexors and

[2] The record indicates that the claim was essentially dormant after a June 17, 2002 decision, denying a claim for a recurrence of disability, until July 2012.

[3] A.M.A., *Guides* (6th ed. 2008).

abductors were 4/5 or 75 percent with weakness and pain bilaterally. Dr. Heatwole diagnosed disorders of the bursa and tendons in the shoulder region, calcifying tendinitis of the shoulder, other affections of the shoulder region not classified and nonallopathic lesions of the thoracic region. He opined that appellant's shoulder disability worsened over time and that he was not at maximum medical improvement. Dr. Heatwole recommended manipulation and physical modalities of the thoracic spine and shoulders bilaterally.

A November 13, 2012 functional capacity evaluation (FCE) prepared by a physical therapist was submitted. It noted that appellant reached maximum medical improvement with regard to his left shoulder. The physical therapist noted range-of-motion findings for the left shoulder of flexion of 150 degrees, extension of 36 degrees, abduction of 146 degrees, adduction of 42 degrees, internal rotation of 47 degrees and external rotation of 58 degrees and cited to the fifth edition of the A.M.A., *Guides*.[4]

By decision dated February 27, 2013, OWCP denied appellant's claim for a schedule award. It found that the evidence submitted was not sufficient to establish permanent impairment due to the accepted left arm injury.

LEGAL PRECEDENT

The schedule award provision of FECA[5] and its implementing 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 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*[7] has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[8]

Not all medical conditions accepted by OWCP result in permanent impairment to a scheduled member.[9] The Board notes that, before applying the A.M.A., *Guides*, OWCP must determine whether the claimed impairment of a scheduled member is causally related to the

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

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] A.M.A., *Guides* (6th ed. 2008).

[8] *See* 20 C.F.R. § 10.404.

[9] *Thomas P. Lavin*, 57 ECAB 353 (2006).

accepted work injury.[10] The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.[11]

ANALYSIS

Appellant claimed a schedule award for permanent impairment of the left shoulder. To be entitled to a schedule award, he must establish that he sustained permanent impairment of a listed member of the body due to an employment injury.[12] Appellant's claim was accepted for left shoulder dislocation and calcifying tendinitis. In a letter dated August 7, 2012, OWCP requested that he submit a medical opinion from a treating physician addressing the degree of any permanent impairment under the A.M.A., *Guides,* and the date of maximum medical improvement. The Board finds that appellant failed to submit medical evidence from a physician to establish that he sustained permanent impairment of his left arm.

Appellant submitted a July 24, 2012 report from Dr. Heatwole, a chiropractor, who noted findings and opined that appellant was not at maximum medical improvement. Section 8101(2) of FECA provides that chiropractors are considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary."[13] Thus, where x-rays do not demonstrate a spinal subluxation (a diagnosis of a subluxation based on x-rays has not been made), a chiropractor is not a "physician," and his or her report cannot be considered as competent medical evidence under FECA.[14] Dr. Heatwole is not a physician as he did not diagnose a spinal subluxation as demonstrated by x-ray. Moreover, under FECA a chiropractor may only qualify as a physician regarding the diagnosis and treatment of spinal subluxations. His or her opinion is not considered competent medical evidence in evaluation of other disorders, including those of the extremities.[15] Dr. Heatwole's opinion in evaluating appellant's left upper extremity is of no probative medical value.[16]

Similarly, the November 13, 2012 FCE prepared by a physical therapist noted that maximum medical improvement was reached with regard to appellant's left shoulder. The physical therapist noted range of motion findings for the left shoulder. However, the report was

---

[10] *Michael S. Mina*, 57 ECAB 379, 385 (2006).

[11] *Veronica Williams*, 56 ECAB 367 (2005) (a schedule award can be paid only for a condition related to an employment injury; the claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment).

[12] *Id.*

[13] 5 U.S.C. § 8101(2); *see also* section 10.311 of the implementing federal regulations provide: "(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submittal of the x-ray, or a report of the x-ray, but the report must be available for submittal on request."

[14] *See Susan M. Herman,* 35 ECAB 669 (1984).

[15] *Pamela K. Guesford*, 53 ECAB 726 (2002).

[16] *George E. Williams*, 44 ECAB 530 (1993).

not signed by a physician. The Board has held that reports signed by a physical therapist are not considered medical evidence as such providers are not defined as a physician under FECA.[17]

In order to determine entitlement to a schedule award, appellant must have a physician provide a detailed description of his left shoulder condition and impairment under the A.M.A., *Guides*. The report must be such that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[18] On August 7, 2012 OWCP requested that appellant provide a report from a treating physician in accordance with the A.M.A., *Guides*. Absent reasoned medical opinion evidence addressing the extent of appellant's impairment under the A.M.A., *Guides*, appellant has failed to establish permanent impairment as a result of his accepted condition.[19]

On appeal appellant asserts that he has decreased range of motion of his shoulder, decreased strength and his activity is limited. As noted, he failed to submit a medical report from a physician. OWCP properly denied his claim.

Appellant may request a schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant failed to establish permanent impairment warranting a schedule award.

---

[17] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render ajoan medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

[18] *See Renee M. Straubinger*, 51 ECAB 667, 669 (2000).

[19] *Id.*; *see also Lela M. Shaw*, 51 ECAB 372 (2000).

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 2013
Washington, DC

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

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

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