United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 14-641**
	)	**Issued: July 3, 2014**
U.S. POSTAL SERVICE, POST OFFICE, East Austin, TX, Employer	)	

Appearances:
Wren Gray Foster, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 29, 2014 appellant, through his attorney, filed a timely appeal from August 7 and 15, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying his claim for an additional schedule award.[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 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 13 percent permanent impairment of the left lower extremity, for which he received schedule awards.

[1] The August 7 and 15, 2013 decisions by OWCP are identical.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In a decision dated November 4, 1997, the Board affirmed a February 15, 1995 OWCP decision denying appellant's request for reconsideration of the termination of his compensation on the grounds that it was untimely and did not establish clear evidence of error.[3] On August 1, 2007 the Board set aside a January 25, 2007 decision granting him a schedule award for a three percent permanent impairment of the left lower extremity.[4] The Board remanded the case for further development of the medical evidence to determine the extent of any permanent impairment. By decision dated July 18, 2011, the Board set aside an April 19, 2010 decision finding that appellant had no impairment of a scheduled member or function.[5] The Board reviewed the finding of Dr. William W. Janes, a Board-certified physiatrist and OWCP referral physician, that appellant had a 10 percent whole person impairment due to a hernia. Dr. Janes further found an impairment of the ilioinguinal nerve but determined that this impairment was included in the hernia rating pursuant to Table 6-10 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2009). An OWCP medical adviser reviewed Dr. Janes' report and noted that FECA did not provide an award for a hernia and that the A.M.A., *Guides* did not provide a lower extremity rating for an ilioinguinal nerve impairment. The Board determined that it was unclear whether Dr. Janes found either a lower extremity impairment or an impairment of the testicles due to the accepted work injury and remanded the case for OWCP to obtain an opinion resolving the issue of whether appellant had a permanent impairment of the lower extremity or other scheduled member. In a decision dated February 1, 2013, the Board set aside a December 13, 2011 decision granting him a schedule award for an additional 10 percent permanent impairment of the left lower extremity.[6] It found that neither Dr. Janes nor the OWCP medical adviser explained how an ilioinguinal nerve impairment affected the lower extremity. The Board remanded the case for OWCP to determine the extent of any impairment of the testicles or left lower extremity under the sixth edition of the A.M.A., *Guides*. The facts and circumstances as set forth in the prior decisions are hereby incorporated by reference.

On April 19, 2013 OWCP again referred appellant to Dr. Janes for an impairment evaluation. In a report dated April 29, 2013, Dr. Janes diagnosed an inguinal hernia with ilioinguinal nerve entrapment and chronic neurogenic pain due to the October 21, 1995 employment injury. He found lumbar spine intervertebral disc disease and sacroiilitis unrelated to appellant's work injury. On examination, Dr. Janes measured a loss of sensation in the left lateral thigh, left lower leg and left foot with decreased reflexes bilaterally in the patellae and Achilles. He further found normal motor strength and "tenderness in the left inguinal area around his scar and in the groin area." Dr. Janes referred to his November 7, 2011 report, in

[3] Docket No. 95-2200 (issued November 4, 1997). OWCP accepted that appellant, then a 34-year-old janitor, sustained abdominal strain, an inguinal hernia, left ilioinguinal nerve entrapment and left scrotal varices due to an October 21, 1985 work injury. By decision dated September 14, 1992, it terminated his compensation after finding that he had no further disability causally related to his accepted work injury.

[4] Docket No. 07-817 (issued August 1, 2007).

[5] Docket No. 10-2168 (issued July 18, 2011).

[6] Docket No. 12-1150 (issued February 1, 2013).

which he used Table 13-20 on page 344 of the A.M.A., *Guides* to find a five percent whole person impairment rating. He stated:

> "Of note, using Figure 16-3, the ilioinguinal nerve is a nerve in the lower extremity; however, in 16-12, the peripheral nerve impairment chart, this nerve is not included and this is the reason why you have to use the miscellaneous peripheral nerve chart 13-20. This would, however, be included in the lower extremity impairment section. [Appellant] is a 5 percent whole person impairment, but h[is] lower extremity impairment would be 13 percent."

Dr. Janes related that the inguinal nerve affected lower extremity sensation and stated, "Neuropathic pain to this nerve can cause radiating pain into the groin area and a portion of the lower extremity. As mentioned above on Figure 16-3, it is included as a lower extremity nerve." He determined that appellant's "peripheral nerve injury would include any rating into the testicle."

On May 14, 2013 an OWCP medical adviser reviewed Dr. Janes April 29, 2013 report and concurred with his findings. He stated, "I agree with Dr. Janes unusual approach to this complicated evaluation. He gives a very detailed rational and persuasive explanation of his conclusion."

In a report dated May 16, 2013, Dr. Ryan Michaud, a Board-certified anesthesiologist, discussed appellant's history of an injury to the low back and left groin area after an October 21, 1985 work injury. He diagnosed a left inguinal hernia without obstruction, left ileal congenital femoral neuralgia, left scrotal varices, low back pain, lumbar radiculopathy, myofascial pain and a sprain at other sites. Dr. Michaud attributed appellant's left inguinal, thigh and scrotal pain to entrapment and the prior hernia surgery. He stated, "[Appellant's] pain pattern radiating down the left leg does seem to be complicated by issues of the proximal thigh being involved in my opinion by the genital femoral nerve and also secondary myofascial pain…." Dr. Michaud found that appellant might have sustained a facet and ligamentous injury resulting in possible impingement of the L4 nerve roots at the time of his injury or might have facet arthrosis due to age.

In decisions dated August 7 and 15, 2013, OWCP found that appellant had no more than the previously awarded 13 percent impairment.

On appeal appellant's attorney contends that the medical evidence establishes that appellant sustained a permanent impairment of the testes and lower extremities. He argues that no physician evaluated the extent of any testicular impairment using grade modifiers. Counsel also notes that Dr. Michaud found possible addition work injuries, including a low back injury and injuries to the hypogastric and genital femoral nerves.

LEGAL PRECEDENT

The schedule award provision of FECA,[7] and its implementing federal regulations,[8] 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[9] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[10]

ANALYSIS

In a prior appeal, the Board discussed Dr. Janes' January 20, 2010 finding that appellant had a 10 percent whole person impairment due to a hernia and an impairment to the ilioinguinal nerve that was included in the rating for the hernia. It found that FECA did not provide an award for a hernia and that the A.M.A., *Guides* did not provide a lower extremity impairment rating for the ilioinguinal nerve. The Board remanded the case for OWCP to obtain an opinion regarding whether appellant had an impairment of the lower extremity or testes due to his work injury. In a decision dated February 1, 2013, the Board reviewed Dr. Janes' November 7, 2011 determination that appellant had a five percent whole person impairment due to ilioinguinal nerve entrapment using Table 13-20 on page 344 of the A.M.A., *Guides* and an OWCP medical adviser's finding that the five percent whole person impairment constituted a 13 percent left lower extremity impairment. The Board determined that Dr. Janes and OWCP's medical adviser did not explain how the ilioinguinal nerve impairment affected the lower extremity and again remanded the case for development of the medical evidence.

In a report dated April 29, 2013, Dr. Janes diagnosed an employment-related inguinal hernia with ilioinguinal nerve entrapment and chronic neurogenic pain. On examination he found decreased sensation in the left lateral thigh, lower left leg and left foot. Referencing his November 7, 2011 report, Dr. Janes related that he found that appellant had a five percent whole person impairment rating using Table 13-20 on page 344 of the A.M.A., *Guides.* He explained that he used the peripheral nerve chart for miscellaneous nerves set forth at Table 13-20 because Figure 16-3, page 537, depicts the ilioinguinal nerve as a lower extremity nerve but does not include it in the peripheral nerve impairment chart at Figure 16-12, page 551, of the A.M.A., *Guides*. Dr. Janes asserted that appellant's inguinal nerve pain altered his lower extremity sensation and caused a left lower extremity impairment of 13 percent. He related that the impairment of the testicle would be included in the rating for the peripheral nerve injury. An OWCP medical adviser reviewed Dr. Janes' report and concurred with his impairment rating,

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] *Id.* at § 10.404(a).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

noting that it was an "unusual approach to [a] complicated evaluation." The Board finds that Dr. Janes provided a well-reasoned report based on a comprehensive examination; consequently, his report is entitled to the weight of the evidence and establishes that appellant has no more than the 13 percent left lower extremity impairment for which he received schedule awards.

On appeal appellant's attorney contends that he has an impairment of the testes. He maintains that no physician evaluated the extent of a testicle impairment using grade modifiers. As noted, however, Dr. Janes found that any testicle impairment was included in the rating for the peripheral nerve injury to the ilioinguinal nerve. There is no medical evidence supporting that appellant has a separate testicular impairment such that he would be entitled to a schedule award.

Counsel also maintains that Dr. Michaud found that appellant may have additional work injuries. The issue is whether he established more than a 13 percent permanent impairment of the left lower extremity. Further, where appellant claims that a condition not accepted or approved by OWCP is due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.[11] Dr. Michaud found that appellant might have either a facet and ligamentous injury and possible L4 impingement due to either his work injury or facet arthrosis due to age. His opinion is thus equivocal and insufficient to show that appellant sustained additional work-related injuries. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.[12]

Appellant may request a schedule award or increased 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 has no more than an additional 10 percent permanent impairment of the left lower extremity, for a total 13 percent permanent impairment of the left lower extremity, for which he received schedule awards.

[11] *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

[12] *L.R. (E.R.)*, 58 ECAB 369 (2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

ORDER

IT IS HEREBY ORDERED THAT the August 15 and 7, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 3, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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