United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
	)	**Docket No. 17-0922**
and	)	**Issued: August 16, 2017**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Trotwood, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 22, 2017 appellant, through counsel, filed a timely appeal from a January 30, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 established that he has more than one percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

OWCP accepted that on August 1, 2013 appellant, then a 38-year-old letter carrier, twisted at the waist while carrying a heavy mail satchel and descending steps, causing a traumatic left hip and thigh sprain and left sacroiliac ligament sprain.[3] Appellant stopped work on August 5, 2013.

Appellant sought treatment from August 5 to 26, 2013 at an urgent care center from Dr. Walter Venable, an attending family practitioner.[4] He returned to part-time modified duty on August 27, 2013.

On August 27, 2013 Dr. Jeffrey M. Rayborn, an attending physician Board-certified in family practice and sports medicine, noted a history of injury, with ongoing left sacroiliac joint pain without radicular symptoms. He diagnosed left sacroiliac joint dysfunction. On September 3, 2013 Dr. Rayborn prescribed physical therapy. He restricted appellant to limited duty through September 17, 2013.

In September 18 and October 16, 2013 reports, Dr. Rayborn opined that the diagnosed inflammation and dysfunction of appellant's left sacroiliac joint was directly related to the August 1, 2013 employment injury. On November 18, 2013 he indicated that appellant had normal strength with left hip flexion. Dr. Rayborn advised that appellant was doing much better, that he could return to full activities without restriction, and that no longer term issue were expected. He opined on August 8, 2014 that the sacroiliac joint sprain had "completely resolved," with no reported symptomatology or dysfunction. Dr. Rayborn found that appellant had attained maximum medical improvement. Appellant resumed full-duty work as a letter carrier.

On September 10, 2014 appellant claimed a schedule award (Form CA-7). In support of his claim, he submitted a November 5, 2014 impairment rating by Dr. Martin Fritzhand, a Board-certified urologist. Dr. Fritzhand provided a history of injury and reviewed medical records. Appellant completed an American Academy of Orthopedic Surgeons (AAOS) lower limb questionnaire scored at 19. On examination, Dr. Fritzhand found full range of lumbar motion in all planes, straight leg raising "diminished to 50 degrees bilaterally," normal strength and sensation throughout both lower extremities, and internal rotation of the left hip "diminished to 25 to 30 degrees." He noted that appellant's left calf was three quarters of an inch smaller in circumference than the right calf, which he described as "marked atrophy involving the left lower limb." Dr. Fritzhand found that appellant had reached maximum medical improvement. Under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*) (2009), Dr. Fritzhand referred to Table

[3] On August 5, 2013 appellant claimed an occupational disease on Form CA-2, but described an August 1, 2013 traumatic incident wherein he twisted while descending steps and carrying a heavy mail satchel. OWCP therefore developed the claim as one for traumatic injury, as appellant attributed the claimed left hip injury to a single traumatic incident. It initially denied the claim by decision dated October 2, 2013, finding the medical evidence of record insufficient to establish causal relationship. Counsel requested a telephonic hearing, held on April 22, 2014 telephonic hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated July 8, 2014, an OWCP hearing representative reversed OWCP's October 2, 2013 decision, and accepted the traumatic injury claim.

[4] August 5, 2013 left hip x-rays showed no osseous abnormality.

16-4.[5] He assessed a class 1, row 1 Class of Diagnosis (CDX) impairment for a history of soft tissue injury with consistent loss of motion, with a default grade of C, equaling two percent permanent impairment. Dr. Fritzhand found a grade modifier for Functional History (GMFH) of 1 for an AAOS lower limb questionnaire score of 19, a grade modifier for findings on Physical Examination (GMPE) of 1, and a grade modifier for Clinical Studies (GMCS) of zero. Applying the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (1-1) + (1-1) + (0-1), resulted in a net adjustment of -1, moving the default grade of C downward one position to B, also equaling two percent impairment. Dr. Fritzhand therefore concluded that appellant had two percent permanent impairment of the left lower extremity due to limited motion of the left hip.

On June 26, 2015 an OWCP medical adviser reviewed Dr. Fritzhand's impairment rating and the medical record. The medical adviser opined that the medical evidence of record and Dr. Fritzhand's clinical findings warranted a Table 16-4, class 1, row 2 impairment for soft tissue injury with no consistent loss of motion, with the default grade of C equaling 1 percent lower extremity impairment. He noted that his rating differed from Dr. Fritzhand's because Dr. Rayborn's November 18, 2013 findings indicated normal range of motion. Applying the -1 grade modifier assessed by Dr. Fritzhand to the class 1, row 2 CDX lowered the default grade from C to B, which also equaled one percent permanent impairment of the left lower extremity.

In an August 26, 2015 letter, OWCP requested that Dr. Fritzhand review OWCP's medical adviser's report and provide rationale supporting any disagreement with the one percent impairment rating. Dr. Fritzhand responded by September 6, 2015 letter, contending that a class 1, row 1 CDX under Table 16-4 was appropriate because appellant had a demonstrated loss of internal rotation on the November 5, 2014 examination. OWCP's medical adviser reviewed Dr. Fritzhand's addendum on September 26, 2015, and advised that he still disagreed with Dr. Fritzhand's rating as Dr. Rayborn's last evaluation of appellant, on November 18, 2013, indicated that he had normal range of motion. He contrasted this with Dr. Fritzhand's finding of loss of motion and opined that findings on motion loss were inconsistent. The medical adviser opined that appellant had one percent permanent impairment of the left leg.

In an October 27, 2015 letter, OWCP requested that appellant obtain an additional report from his attending physician addressing the appropriate percentage of permanent impairment of the left lower extremity. Counsel responded by November 23, 2015 letter that OWCP's request for additional medical evidence was "without basis in law or fact," and that appellant had "no obligation to have his treating physician provide a calculation."

By decision dated March 9, 2016, OWCP granted appellant a schedule award for one percent permanent impairment of the left lower extremity. The period of the award, equal to 2.88 weeks ran from November 5 to 25, 2014.

In a March 16, 2016 letter, appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, held on November 15, 2016. At the hearing, counsel contended that OWCP should have accorded the weight of the medical evidence to Dr. Fritzhand because he examined appellant, whereas OWCP's medical adviser did not.

[5] A.M.A., *Guides* 512-15, Table 16-4 is titled "Hip Regional Grid -- Lower Extremity Impairments."

By decision dated January 30, 2017, OWCP's hearing representative affirmed the March 9, 2016 schedule award decision, finding that Dr. Fritzhand misapplied the A.M.A., *Guides*, whereas OWCP's medical adviser utilized the appropriate rating method to determine one percent permanent impairment of the left lower extremity.

LEGAL PRECEDENT

The schedule award provisions of FECA[6] and its implementing regulations[7] 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* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[8] The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.[9]

In addressing lower extremity impairments, the sixth edition requires identifying the impairment class for the CDX condition, which is then adjusted by GMFH, GMPE, and GMCS.[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS -CDX).[11]

In some instances, OWCP medical adviser's opinion can constitute the weight of the medical evidence. This occurs in schedule award cases where an opinion on the percentage of permanent impairment and a description of physical findings is on file from an examining physician, but the percentage estimate by this physician is not based on the A.M.A., *Guides*. In this instance, a detailed opinion by the medical adviser may constitute the weight of the medical evidence.[12]

ANALYSIS

OWCP accepted that appellant sustained a left hip and thigh sprain and a left sacroiliac ligament sprain on August 1, 2013 while carrying a heavy satchel descending stairs. Dr. Rayborn, an attending physician Board-certified in family practice and sports medicine, opined on August 8,

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id*. *See also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (January 2010).

[9] Federal (FECA) Procedure Manual, *id*. at Chapter 2.808.5a (February 2013).

[10] A.M.A., *Guides* 411.

[11] *Id*.

[12] Federal (FECA) Procedure Manual *supra* note 8 at Chapter 2.810.8j; *John L. McClanic*, 48 ECAB 552 (1997).

2014 that the sacroiliac sprain had resolved completely, and that appellant was at maximum medical improvement.

Appellant claimed a schedule award on September 10, 2014. He provided a November 5, 2014 impairment rating performed by Dr. Fritzhand, a urologist, who assessed two percent permanent impairment of the left lower extremity due to internal rotation of the left hip limited to 30 degrees. He applied a class 1, row 1 impairment for soft tissue injury with consistent loss of motion. An OWCP medical adviser reviewed Dr. Fritzhand's impairment rating on June 26, 2015. He agreed with the use of Table 16-4 used by Dr. Fritzhand but opined that range of motion loss was not confirmed by Dr. Rayborn who, on November 18, 2013, indicated that appellant had normal motion. Thus, he advised that it was more appropriate to use that part of Table 16-4 which did not allow for consistent motion deficits, for which one percent permanent impairment was provided. In a September 26, 2015 addendum, the medical adviser reiterated his opinion, noting that Dr. Fritzhand's range of motion findings were inconsistent with Dr. Rayborn's findings. OWCP requested that appellant submit additional medical evidence, but counsel opted not to further supplement the medical record. On March 9, 2016 OWCP issued a schedule award for one percent permanent impairment of the left lower extremity, based on OWCP's medical adviser's review of Dr. Fritzhand's clinical findings. Following a telephonic oral hearing, and OWCP's hearing representative affirmed the March 9, 2016 schedule award determination on January 30, 2017, explaining that Dr. Fritzhand did not utilize the appropriate diagnosis in calculating the percentage of permanent impairment.

The Board finds that the weight of the medical evidence established that appellant had one percent permanent impairment of the left leg. Dr. Fritzhand provided a comprehensive history of injury and treatment, reviewed medical records, and offered an impairment rating. He opined that appellant had attained maximum medical improvement. Dr. Fritzhand performed a clinical examination, during which he noted limited internal rotation of the left hip. OWCP's medical adviser applied the appropriate tables and grading schemes to Dr. Fritzhand's clinical findings, explaining that a soft tissue injury with no consistent loss of motion was the appropriate diagnosis. He observed that Dr. Fritzhand's finding of loss of range of motion was inconsistent with Dr. Rayborn's findings and thus excluded its consideration.[13] The Board finds that OWCP's medical adviser properly applied the A.M.A., *Guides*, to the findings provided in the medical record in determining that appellant had no more than one percent permanent impairment of the left leg.[14]

On appeal, counsel simply contends that OWCP's January 30, 2017 decision is "contrary to law and fact." OWCP appropriately relied on OWCP's medical adviser's impairment calculation, which properly applied the appropriate diagnosis classification to Dr. Fritzhand's objective clinical findings.

[13] *See* A.M.A., *Guides* 496 (inconsistencies and discrepancies between what is observed, what has been previously reported, and what is otherwise expected should be noted; findings that differ significantly from previously recorded observations after the probable date of maximum medical improvement should be reported with comment noting the discrepancy; these findings may be excluded from the impairment calculation).

[14] *See supra* note 12.

Appellant may request a schedule award or increased schedule award at any time 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 not established more than one percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 30, 2017 is affirmed.

Issued: August 16, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board