United States Department of Labor
Employees' Compensation Appeals Board

TERI J. FRIEND, Appellant	)	
and	)	**Docket No. 04-2276**
	)	**Issued: September 8, 2005**
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROFRAMS, New York, NY, Employer	)	

Appearances:
Teri J. Friend, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 20, 2004 appellant filed a timely appeal from the August 30, 2004 merit decision of the Office of Workers' Compensation Programs, denying modification of her schedule award which found 19 percent impairment to both lower extremities. Pursuant to 5 U.S.C. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit schedule award decision.

ISSUE

The issue is whether appellant has more than 19 percent impairment to both lower extremities, for which she received schedule awards.

FACTUAL HISTORY

This is the second appeal before the Board.[1] On July 27, 2000 the Board set aside a September 17, 1998 decision of the Office, which denied appellant's claim for a recurrence of

[1] The Board notes that the record also contains evidence regarding an occupational disease claim appellant filed

disability. The Board instructed the Office to refer her, together with the case record and statement of accepted facts, to an appropriate medical specialist regarding the causal relationship between appellant's back condition and her December 15, 1995 employment injury. The facts and circumstances of the case are presented in the Board's decision and are hereby incorporated by reference.[2]

Subsequent to the Board's remand order, the Office expanded appellant's claim and accepted accelerated bilateral hip arthritis.

On October 18, 2002 appellant filed a claim for a schedule award. She submitted an April 3, 2002 report and a May 2, 2002 addendum by Dr. Richard Walter Kudrewicz, a treating physician. On April 3, 2002 he noted that appellant had "severe degenerative disease of her low back and hip discomfort" based on x-ray interpretations. Range of motion for the right hip was 50 degrees forward flexion, 30 degrees abduction, 15 degrees adduction, 20 degrees of extension, 15 degrees internal rotation and 15 degrees external rotation. Her left hip range of motion was noted as 55 degrees forward flexion, 30 degrees abduction, 20 degrees adduction, 20 degrees extension, 20 degrees internal rotation and 20 degrees external rotation. Dr. Kudrewicz concluded that appellant had a four percent whole person impairment based on her left hip range of motion. He reported that she has "an antalgic limp with shortened stance phase and moderate to advanced arthritic changes of her hips." Dr. Kudrewicz determined that appellant had "a minimum 15 [percent] impairment whole person under [T]able 36." He stated that she had "potential qualifiers of gait derangement, as well as loss of range of motion bilaterally, as well as a potential for impairment under [T]able 62 for arthritis." Dr. Kudrewicz opined that she was stable and that he had used the 4th edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* to rate her impairment.

In a May 2, 2002 addendum, Dr. Kudrewicz reported that an April 6, 2002 x-ray interpretation revealed, as follows:

> "Regarding the right hip, laterally [appellant] is at 5 m[illi]m[eters] and medially she is at 4 m[illi]m[eters]. This is considered within normal limits according to [T]able 62 and does not warrant an impairment. In the left hip, the lateral joint space is three m[illi]m[eters] and medially is six m[illi]m[eters]. The three m[illi]m[eters] would qualify for a three [percent] impairment whole [person]."

Dr. Kudrewicz noted appellant that had loss of range of motion in both hips and "probably qualifies under gait derangement." He stated:

> "I would rate [appellant] out at [T]able 36, page 76, category C. [She] has an antalgic limp with shortened stance phase and documented moderate to advanced arthritic changes of her hip with requirement of can[e] or crutch for distance

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for aggravation of her asthma. This was assigned claim number 11-0164603 and accepted for temporary aggravation of asthmas, which had resolved February 19, 1999. The Office assigned claim number 11-0147382 for appellant's December 19, 1995 employment injury.

[2] Docket No. 99-856 (issued July 27, 2000). On December 15, 1995 the Office accepted that appellant, then 48-year-old claims examiner, sustained a lumbar strain in the performance of duty.

> walking. This would be a 15 [percent] impairment whole person. This is probably the most reasonable way to rate [appellant] out. If we are going to consider her degenerative disease as a preexisting situation, at least relative to the 1995 claim, then I would apportion her hip impairment at 50 [percent] preexisting to [December] 15, [19]95 and 50 [percent] caused by aggravation of preexisting disease from accident of [December] 15, [19]95. This would leave us with a total 7.5 [percent] impairment whole [person] referable to this patient for left and right hip disease referable to accident of [December] 15, [19]95."

In a December 27, 2002 report, an Office medical adviser concluded that appellant had a 19 percent impairment of both her right and left lower extremities.[3] In reaching this determination, he noted that a 15 percent whole person impairment rating utilizing Table 17-3 would equal a 37 or 38 percent lower extremity impairment based on her antalgic gait. The Office medical adviser noted that appellant had a slow normal gait "with rather short steps." He noted that under the Federal Employees' Compensation Act impairment awards were not based upon a whole person impairment rating.

On January 27, 2003 the Office issued a schedule award for a 19 percent impairment to both lower extremities. The period of the awards was for April 3, 2002 to May 8, 2004.

In a letter dated February 19, 2003, appellant disagreed with the amount of the schedule awards and requested a review of the written record.

By decision dated July 1, 2003, the Office hearing representative affirmed the January 27, 2003 schedule awards.

In a letter dated June 25, 2004, appellant requested reconsideration and submitted reports from Dr. Kudrewicz and an April 1, 2004 report by Dr. Joseph R. Nicola, a chiropractor, who reported her left hip range of motion as 65 degrees of flexion, 9 degrees of extension, 12 degrees abduction, 18 degrees adduction, 0 degrees internal rotation and 18 degrees external rotation. Right hip range of motion was noted as 85 degrees of flexion, 10 degrees of extension, 10 degrees abduction, 15 degrees adduction, 0 degrees internal rotation and 20 degrees external rotation. Dr. Nicola noted that appellant "was unable to heel toe walk." Using the fifth edition of the A.M.A., *Guides*, he determined that she had a 40 percent whole person impairment due to a moderate gait derangement pursuant to Table 17-5, page 529. Dr. Nicola utilized Table 17-9, page 537 to determine that appellant had a 40 percent impairment of the right lower extremity and the left lower extremity due to range of motion losses. He opined that she had a "20 [percent] whole person impairment due to bilateral hip osteoarthritis and gait derangement."

By decision dated August 30, 2004, the Office found the evidence insufficient to warrant modification of the July 1, 2003 decision.

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[3] *Compare* Table 36, fourth edition at page 76, with Table 17-5, fifth edition at page 529.

LEGAL PRECEDENT

The schedule award provision of the Act[4] and its implementing regulations[5] sets 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, the Act 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.[6] Effective February 1, 2001, the fifth edition of the A.M.A., *Guide*s is used to calculate schedule awards.[7]

The A.M.A., *Guides*, Chapter 17, provides multiple grading schemes and procedures for determining the impairment of a lower extremity due to gait derangement,[8] muscle atrophy,[9] muscle weakness,[10] arthritis,[11] nerve deficits[12] and other specific pathologies. Section 17.2d of the fifth edition of the A.M.A., *Guides* state that values for unilateral atrophy and muscle weakness are not to be combined.[13]

ANALYSIS

The Board notes that the April 1, 2004 report of Dr. Nicola is not a basis for a schedule award determination. Chiropractors are defined as a physician under the Act "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."[14] An opinion from a chiropractor with respect to permanent impairment of a scheduled extremity or other member of

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[4] 5 U.S.C. §§ 8101-8193.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404 (2003).

[7] FECA Bulletin No. 01-05 (issued January 29, 2001); *see Jesse Mendoza*, 54 ECAB ___ (Docket No. 03-1516, issued September 10, 2003).

[8] A.M.A., *Guides* at 529, Table 17-5.

[9] *Id.* at 530, Table 17-6.

[10] *Id.* at 532, Table 17-8.

[11] *Id.* at 544, Table 17-31.

[12] *Id.* at 552, Table 17-37.

[13] *Id.* at 530, section 17.2d. Atrophy ratings should not be combined with any of the other three possible ratings of diminished muscle function (gait derangement, muscle weakness and peripheral nerve injury).

[14] 5 U.S.C. § 8101(2); *see also Isabelle Mitchell*, 55 ECAB ___ (Docket No. 04-830, issued July 8, 2004).

the body is beyond the scope of the statutory limitation of a chiropractor's services.[15] Dr. Nicola's report is of no probative value with regard to appellant's permanent impairment.

In an April 3, 2002 report, Dr. Kudrewicz used the fourth edition of the A.M.A, *Guides* to determine that appellant had "a minimum 15 [percent] impairment whole [person] under [T]able 36" based on her "antalgic limp with shortened stance phase and moderate to advanced arthritic changes of her hips." In an May 2, 2002 addendum, Dr. Kudrewicz stated that he would "rate [appellant] out at [T]able 36, page 76, category C," on the basis that she "has an antalgic limp with shortened stance phase and documented moderate to advanced arthritic changes of her hip with requirement of can[e] or crutch for distance walking." He concluded that she had a 15 percent whole person impairment based upon her antalgic limp. The Act, however, does not provide a schedule award based on whole person impairments.[16] The Board finds that the Office, therefore, properly determined that Dr. Kudrewicz's impairment rating could not be used as a basis for a schedule award.

The Office medical adviser applied the findings of Dr. Kudrewicz regarding appellant's gait and correlated them to the fifth edition of the A.M.A., *Guides*. He noted the description that she had a slow normal gait "with rather short steps" and that this was the most favorable method of evaluating impairment. However, he does not provide any rationale explaining why this would be the most favorable method of evaluating appellant's impairment.

The Board notes that section 17.2c of the A.M.A., *Guides* provides as follows:

> "Gait derangement is present with many different types of lower extremity impairments and is always secondary to another condition. An impairment rating due to a gait derangement should be supported by pathologic findings, such as x-rays. Except as otherwise noted, the percentages given in Table 17-5 are for full time gait derangements of persons who are dependent on assistive devices.
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> *Whenever possible, the evaluator should use a more specific method.* When the gait method is used, a written rationale should be included in the report. The lower limb impairment percents shown in Table 17-5 stand alone and are not combined with any other impairment evaluation method."[17] (Emphasis in the original.)

As noted above, Section 17.2c of the fifth edition of the A.M.A., *Guides* precludes the use of gait derangement to calculate appellant's impairment if a more specific method is

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[15] *George E. Williams,* 44 ECAB 530 (1993); *see also Pamela K. Guesford*, 53 ECAB 726 (2002) (As a chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation, 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).

[16] *See Tania R. Keka*, 55 ECAB ___ (Docket No. 04-177, issued February 27, 2004); *James E. Mills*, 43 ECAB 215 (1991) (neither the Act, nor its implementing regulations provide for a schedule award for impairment to the body as a whole).

[17] A.M.A., *Guides*, *supra* note 8 at 529.

available to assess the impairment. As the record is unclear as to why the Office medical adviser elected to calculate appellant's impairment based upon a gait derangement rather than using another impairment evaluation method, such as range of motion, the Board will remand the case to the Office so that its Office medical adviser may provide the necessary rationale for using gait derangement rather than using another impairment evaluation method such as range of motion to calculate appellant's impairment. Following this and any further development deemed necessary, the Office will issue *de novo* decisions regarding appellant's lower extremities' impairment.

CONCLUSION

The Board finds that this case is not in posture for a decision as further development on the issue of appellant's impairment of her lower extremities is required in this case.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 30, 2004 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: September 8, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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