United States Department of Labor
Employees' Compensation Appeals Board

JODY L. WILLIAMSON, Appellant	)	
and	)	**Docket No. 05-1447**
	)	**Issued: December 16, 2005**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Laurel, DE, Employer	)	

Appearances:
Michael L. Sensor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 28, 2005 appellant filed a timely appeal of a March 31, 2005 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has greater than an 11 percent impairment of each lower extremity, for which he received a schedule award. On appeal, appellant alleged that the Office failed to consider the schedule award rating provided by his attending physician.

FACTUAL HISTORY

This is appellant's second appeal before the Board in this case. By decision dated November 27, 1998,[1] the Board affirmed a December 31, 1996 decision of the Office denying appellant's claim for a September 19, 1996 recurrence of disability related to an accepted neck

[1] Docket No. 97-989

condition. The law and the facts of the case as set forth in the prior decision and order are incorporated by reference. The Office accepted that appellant sustained a displacement of the L4-5 lumbar disc and degenerative disc disease of the thoracic and lumbar spine in the performance of duty on or before January 2, 1996, requiring three surgical procedures. Appellant stopped work on October 24, 1996 and did not return. He received compensation on the daily rolls. Appellant's case was placed on the periodic rolls as of July 12, 1997.

Appellant underwent an L4-5 discectomy on September 19, 1996 and a total L4 laminectomy on February 12, 1997. On November 18, 1997 appellant underwent an L4-5 and L5-S1 discectomy with Bagby and Kuslich (BAK) cages and, an anterior lumbar interbody fusion with and iliac crest bone grafts on the left. As appellant's symptoms did not resolve on December 18, 1998, he underwent implantation of a temporary spinal cord stimulator. After the trial failed to ameliorate appellant's symptoms, appellant had an intrathecal Clonidine pump surgically implanted on March 13, 2000. In August 2001, appellant's medication was revised to include intrathecal Fentanyl. Appellant was followed at a pain clinic through January 2005, for failed back surgery syndrome. His treatment included epidural injections and a transcutaneous electrical neural stimulation unit.

On December 31, 2004 appellant claimed a schedule award and submitted a May 6, 2004 report by Dr. Charles A. Mauriello, an attending Board-certified osteopath specializing in orthopedic surgery. Dr. Mauriello diagnosed status post lumbar surgery times three with residual symptoms, "[p]ostoperative fibrosis at L4 with stenosis, especially on the right," "L4 disc space distraction," adhesive capsulitis of the hips, knees, ankles and feet bilaterally secondary to lumbar symptomatology, "[o]steolysis at the lumbosacral junction [BAK] cage implantation indicating loosening," chronic pain syndrome of the lumbar spine and lower extremities, discogenic lumbar spondylosis/spondyloarthrosis at L3 and discogenic cervical spondylosis. Referring to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*), Dr. Mauriello found a 28 percent impairment of the right lower extremity due to spinal pathology. He explained that the 28 percent rating was comprised of a 10 percent impairment due to internal hip rotation limited to 0 degrees, a 10 percent impairment due to knee extension limited to 7 degrees, a 7 percent impairment "to the right ankle secondary to dorsiflexion at the neutral," a 2 percent impairment to the right foot "because of mild, decreased foot motion," and a 3 percent impairment due to Grade 3 pain in the right L5 nerve root distribution. Regarding the left lower extremity, Dr. Mauriello found a 27 percent impairment due to the same limitations of range of motion as he observed in the right leg. He found appellant totally disabled for work.

On February 3, 2005 the Office referred Dr. Mauriello's May 26, 2004 report to an Office medical adviser for review. In a February 23, 2005 report, an Office medical adviser opined that appellant reached maximum medical improvement as of October 6, 2004. The Office medical adviser commented that Dr. Mauriello used the fourth edition of the A.M.A., *Guides* rather than the fifth edition and that there was no basis given for his calculations. Referring to Table 15-18, page 424[2] of the fifth edition of the A.M.A., *Guides*, the medical adviser found that the

[2] Table 15-18, page 424 of the fifth edition of the A.M.A., *Guides* is entitled "Unilateral Spinal Nerve Root Impairment Affecting the Lower Extremity." Table 15-18 provides that the maximum percentage loss of function due to sensory deficit or pain in the L5 nerve distribution was 5 percent and that the maximum percentage loss of function due to loss of strength in the L5 nerve root distribution was 37 percent.

maximum percentage of loss allowable for sensory impairments of the lower extremity due to L5 nerve root impairment was 5 percent. The medical adviser then referred to Table 15-15, page 424[3] and assigned a Grade 4 classification for severity of sensory loss.[4] The medical adviser then multiplied the Grade 4 sensory loss of 25 percent by the 5 percent maximum allowable rating for the L5 nerve root for sensory impairment, resulting in a 1.25 percent impairment of both the right and left lower extremities for sensory loss. The Office medical adviser then assessed a Grade 4 or 25 percent impairment due to motor deficits according to Table 15-16, page 424.[5] He then multiplied the 25 percent impairment for motor loss by the 37 percent impairment rating for L5 nerve root impairment causing motor loss according to Table 15-18, equaling 9.25 percent. The medical adviser then added the 1.25 and 9.25 percent impairments to equal 10.50 percent, which he then rounded up to an 11 percent impairment to the right and left lower and extremities.

By decision dated March 31, 2005, the Office awarded appellant a schedule award for an 11 percent permanent impairment of the right lower extremity and an 11 percent impairment of the left lower extremity. The period of the award was to run for 63.35 weeks, from March 20, 2005 to June 6, 2006.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act[6] and section 10.404 of the implementing federal regulations,[7] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[8]

The Board notes that, although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under the Act for injury to the spine.[9] In 1960, however, amendments to the Act modified the schedule award

[3] Table 15-15, page 424 of the fifth edition of the A.M.A., *Guides* is entitled "Determining Impairment Due to Sensory Loss."

[4] According to Table 15-15, page 424 of the A.M.A., *Guides*, a Grade 4 impairment represents a 1 to 25 percent sensory loss, characterized by "[d]istorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity."

[5] Table 15-16, page 424 of the A.M.A., *Guides* (5th ed. 2001) is entitled "Determining Impairment Due to Loss of Power and Motor Deficits." According the Table 15-16, a Grade 4 impairment connotes a range of a 1 to 25 percent motor deficit, characterized as "[a]ctive movement against gravity with some resistance."

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *See Joseph Lawrence, Jr.*, 53 ECAB 331 (2002); *James J. Hjort*, 45 ECAB 595 (1994).

[9] *Pamela J. Darling*, 49 ECAB 286 (1998).

provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originates in the spine.[10]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be referred to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[11]

ANALYSIS

The Office accepted that appellant sustained an L4-5 disc displacement and degenerative disc disease of the lumbar and thoracic spine, requiring three surgical procedures. The Office awarded appellant a schedule award for an 11 percent permanent impairment of each lower extremity due to the accepted spinal conditions. The Office based this award on the February 23, 2005 report of an Office medical adviser reviewing the May 26, 2004 report of Dr. Mauriello, an attending osteopath Board-certified in orthopedic surgery. On appeal, appellant contends that the Office failed to consider Dr. Mauriello's opinion. The Board finds, however, that Dr. Mauriello did not properly utilize the A.M.A., *Guides* in assessing his percentage of permanent impairment due to the L4-5 disc displacement and degenerative disc disease.

Dr. Mauriello opined that appellant had a 28 percent impairment of the right lower extremity and a 27 percent impairment of the left lower extremity based on restricted range of motion of the hips, knees, ankles and feet bilaterally. Although he stated that this rating was based on the fifth edition of the A.M.A., *Guides*, Dr. Mauriello did not refer to any specific table or grading schemes. He did not explain how his clinical findings correlated with the specific provisions of the A.M.A., *Guides* to result in the offered impairment ratings. Dr. Mauriello's report is of diminished probative value in establishing the appropriate percentage of permanent impairment in this case.

The Office referred Dr. Mauriello's report for review by an Office medical adviser. In a February 23, 2005 report, the medical adviser relied on Table 15-18, page 424 of the A.M.A., *Guides* in determining that a sensory deficit of the lower extremities caused by impairment of the L5 nerve root was accorded a maximum 5 percent impairment rating. The medical adviser then multiplied this 5 percent rating by an assessed Grade 4 or 25 percent sensory loss according to Table 15-15, equaling 1.25 percent for each lower extremity. For motor loss, he assessed a Grade 4 or 25 percent impairment according to Table 15-16. The medical adviser multiplied this 25 percent by the 37 percent impairment rating for the L5 nerve root according to Table 15-18, resulting in a 9.25 percent impairment. He then combined the 1.25 and 9.25 percent impairments to equal 10.50 percent, rounded up to equal an 11 percent impairment to the right and left lower and extremities.

[10] *Tommy R. Martin*, 56 ECAB ___ (Docket No. 03-1491, issued January 21, 2005).

[11] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

The Board notes that the Office medical adviser mistakenly stated that Dr. Mauriello improperly relied on the fourth edition of the A.M.A, *Guides* and not the fifth edition currently in use. However, the Board finds that this is harmless error. Regardless of which edition of the A.M.A., *Guides* Dr. Mauriello relied on, he did not provide specific references to any tables or grading schemes set forth in the A.M.A., *Guides*. In contrast, the Office medical adviser provided detailed rationale referring to the appropriate assessment criteria set forth in the fifth edition of the A.M.A, *Guides*.

The Board finds that the Office medical adviser properly applied the appropriate grading schemes of the A.M.A., *Guides* in assessing the percentage of permanent impairment of the lower extremities. Therefore, the Board further finds that the Office properly accorded the weight of the medical evidence to the reports of the Office medical adviser.

CONCLUSION

The Board finds that appellant has not established that he sustained greater than an 11 percent impairment of each lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 31, 2005 is affirmed.

Issued: December 16, 2005
Washington, DC

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

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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