

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRE L. GROGAN and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 97-1094; Submitted on the Record;
Issued December 15, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a three percent permanent impairment of his left leg for which he received a schedule award.

On November 17, 1989 appellant filed a claim for a traumatic injury occurring on September 19, 1989. The Office of Workers' Compensation Programs accepted appellant's claim for a herniated disc at L5-S1 and authorized a microdisectomy at L5-S1 which was performed on November 21, 1989.

By letter dated February 10, 1994, appellant's attorney submitted evidence in support of a claim for a schedule award. Following further development, in a decision dated August 8, 1995, the Office granted appellant a schedule award for a three percent permanent impairment of the left leg. Appellant requested a hearing, which was held on February 28, 1996. By decision dated June 5, 1996, the Office hearing representative affirmed the Office's August 8, 1995 decision. By decision dated November 5, 1996, the Office denied modification of its prior decision.

Under section 8107 of the Federal Employee's Compensation Act,¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations 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 American Medical Association, *Guides to the Evaluation of Permanent*

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

Impairment, (4th ed. 1993) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

In support of his request for a schedule award, appellant submitted a report dated October 1, 1993 from Dr. Nicholas P. Diamond, an osteopath. Dr. Diamond discussed appellant's complaints of left ankle pain, thigh discomfort and numbness of the feet. He related that, according to the A.M.A., *Guides* appellant had a 10 percent impairment due to his L5-S1 microdisectomy, a 3 percent impairment due to right upper muscle atrophy, a 3 percent impairment due to right lower muscle atrophy, and a 10 percent sensory impairment at L5-S1. Dr. Diamond concluded that appellant had a 26 percent impairment of the right lower extremity.

On the advice of the Office medical adviser, the Office referred appellant to Dr. Nobar Didizian, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated September 16, 1994, he stated that appellant related that following his disc surgery at L5-S1 he experienced numbness in the medial aspect of the left foot and heel without radiculopathy through the calf or thigh. The physician noted that appellant denied problems with his right leg. Dr. Didizian concluded that appellant had no loss of range of motion or motor strength and that the numbness in his foot was not physiological.

The Office determined that a conflict existed between Drs. Diamond and Didizian regarding whether appellant had a permanent impairment which would entitle him to a schedule award. The Office referred appellant to Dr. Herbert Stein, a Board-certified orthopedic surgeon, for resolution of the conflict.

In a report dated July 3, 1995, Dr. Stein related that appellant complained "of numbness or tingling in the lateral aspect of the left foot" without pain in either lower extremity. He further noted that appellant had no evidence of either instability or loss of motion in his lower extremities. Dr. Stein found that appellant had paresthesias in the S1 distribution of the left foot with sensation to pinprick but had otherwise fully recovered from his injury and surgery.

In a report dated August 4, 1995, an Office medical adviser reviewed Dr. Stein's report and properly applied the A.M.A., *Guides* to his clinical findings. The Office medical adviser found that, according to the Table 83 on page 130 of the A.M.A., *Guides*, the maximum impairment due to sensory loss at S1 was 5 percent, which he multiplied by 60 percent according to the grading scheme for pain or loss of sensation at Table 11 on page 48 to find that appellant had a 3 percent impairment of the left leg.

Appellant submitted a report from Dr. Diamond dated March 7, 1996, in which he concluded that appellant had a 19 percent impairment of the right lower extremity due to muscle weakness and sensory deficit. However, the issue in the present case is the extent of appellant's impairment of his left lower extremity, and thus his report regarding his right lower extremity is not relevant.

³ James J. Hjort, 45 ECAB 595 (1994).

Appellant also submitted a report dated July 23, 1996 from Dr. David Weiss, an osteopath. Regarding appellant's left lower extremity, he found that appellant had a 5 percent sensory deficit at L5 and S1,⁴ which he multiplied by a graded 60 percent for pain to yield a 3 percent impairment.⁵ He then combined the three percent impairment findings and concluded that appellant had a six percent impairment of the left lower extremity. However, Dr. Weiss provided no clinical findings based on a physical examination of appellant or medical rationale in support of his conclusion that appellant had a permanent impairment due to sensory deficit at both L5 and S1. Thus, his opinion is of diminished probative value.

Accordingly, the Board finds that the weight of the evidence establishes that appellant has no more than a three percent impairment of the left leg.

The decisions of the Office of Workers' Compensation Programs dated November 5 and June 5, 1996 are hereby affirmed.

Dated, Washington, D.C.
December 15, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ A.M.A., *Guides* 130, Table 83.

⁵ *Id.* at 48, Table 11.