

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUDY R. ORSABA and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Fresno, CA

*Docket No. 97-1111; Submitted on the Record;
Issued August 3, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained greater than a three percent permanent impairment of the right lower extremity for which he received a schedule award.

On June 4, 1984 appellant, then a 50-year-old file clerk, sustained a cervical strain, right calf strain and a herniated nucleus pulposus at L4-5 in the performance of duty. Appellant returned to work on July 5, 1988.

In a form dated May 31, 1996, appellant filed a claim for a schedule award.

By letter dated June 27, 1996, the Office of Workers' Compensation Programs referred appellant, along with a statement of accepted facts and copies of medical records to Dr. Robert M. Mochizuki, a Board-certified orthopedic surgeon, for an examination and evaluation as to the extent of any remaining disability or impairment causally related to his June 4, 1984 employment injury.

In a report dated July 15, 1996, Dr. Mochizuki provided a history of appellant's condition and related that he underwent a lumbar laminectomy in October 1987 with symptomatic complaints in the lower extremity, resolved. He stated:

“His current symptomatic complaints include periodic discomfort in his lower lumbar spine. [Appellant] notes weakness of his right lower extremity with prolonged walking and standing. He uses a cane for walking long distances. However, [appellant] feels that he does not have any permanent residuals as a result of his back injury.”

Dr. Mochizuki related that x-rays taken on July 15, 1996 revealed a dense bony fusion between L4-5 with some disc space narrowing at L4-5. He provided findings on examination which revealed right knee flexion of 140/140, extension of 0/0. Ankle motion revealed dorsiflexion of 10/10, plantar flexion 40/40, inversion 20/20, eversion 15/15. There was no

obvious swelling or altered range of motion in any of the joints. Leg lengths were equal. Calf circumferences were equal. There was no obvious atrophy. Pulses were present. Sensory and motor examination were normal throughout. He stated:

“Based on [appellant’s] history, the medical treatment rendered, along with my observations and physical examination, I would classify his subjective ratable factors as occasional minimal at rest, increasing to intermittent slight to moderate with sustained bending, stooping, lifting and carrying activities. His symptoms are relieved by rest and mild analgesic medication.

* * *

“[Appellant’s] objective factors include a [computerized tomography scan] and lumbar myelography showing lumbar disc herniation. His x-rays reveal a fusion between L4-5 ... His physical examination appears normal other than the surgical scar.”

In a report dated September 24, 1996, an Office medical consultant stated that he had reviewed the case record and Dr. Mochizuki’s July 15, 1996 report. He stated:

“The basis of calculating an award for the permanent functional loss of the lower extremities would be chapter three in [the] fourth edition of the [American Medical Association, *Guides to the Evaluation of Permanent Impairment*]. Specifically, [T]able 83 on page 130 notes the impairment of the lower extremities for unilateral spinal nerve root involvement. The individual has L5 nerve root involvement and the maximum award would be five [percent] for pain or sensory deficits. This reviewer would recommend grading the pain complaints of ‘some weakness’ and discomfort as a maximal grade III as per the grading scheme found in chapter three, fourth edition of the [A.M.A., *Guides*].¹ This would be a 60 [percent] grade of the 5 [percent] or a 3 [percent] impairment of the right lower extremity for the pain complaint and subjective complaints of weakness. The records do not describe thigh or calf accuracy or measurable weakness for a zero [percent] impairment noting that sensory and motor examination were normal throughout and there was no ‘obvious atrophy.’ There are no symptoms involving the left lower extremity for a 0 [percent] impairment. There are no findings in the left lower extremity.

“The final award would be a three [percent] impairment of the right lower extremity and a zero [percent] impairment of the left lower extremity with date of maximum medical improvement reached years earlier than the July 15, 1996 report from Dr. Mochizuki with this reviewer estimating a date of maximum medical improvement no later than two years following the October 1987 surgery.”

¹ The Office medical consultant is referring to Table 11 at page 48 of the A.M.A., *Guides*, reproduced in Table 20 at page 151.

By decision dated October 23, 1996, the Office granted appellant a schedule award based upon a three percent permanent impairment of the right lower extremity.

The Board finds that appellant has no more than a three percent permanent impairment of the right lower extremity for which he received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,³ including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.⁴

Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁵ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁶

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment."⁷ This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.⁸

In this case, Dr. Mochizuki, a Board-certified orthopedic surgeon and Office referral physician, provided findings on examination and a description of appellant's subjective complaints and objective findings. However, he did not apply these findings to the procedures in the A.M.A., *Guides* for determining permanent impairment.

² 5 U.S.C. §§ 8101-8193.

³ *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ 5 U.S.C. § 8107(a).

⁶ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995); see *John H. Smith*, 41 ECAB 444, 448 (1990).

⁸ *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

The Office medical consultant applied the findings provided by Dr. Mochizuki to the applicable portions of the A.M.A., *Guides*. He determined that appellant had a 3 percent permanent impairment of the right lower extremity based upon Table 83 at page 130 and Table 11 at page 48 of the fourth edition of the A.M.A., *Guides* for impairment due to pain and sensory deficit. He determined that there were no findings indicative of permanent impairment of the left lower extremity.

There is no medical evidence establishing that appellant had more than a three percent permanent impairment of the right lower extremity.

The October 23, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 3, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member