

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARLENE GOODMAN and DEPARTMENT OF THE NAVY,
FLEET & INDUSTRIAL SUPPLY CENTER, San Diego, CA

*Docket No. 00-156; Submitted on the Record;
Issued December 11, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has more than a three percent impairment of the left lower extremity for which she received a schedule award.

On June 9, 1993 appellant, then a 43-year-old secretary, filed a claim for traumatic injury (Form CA-1) alleging that on June 3, 1993 she sustained an injury to her left lower back, left lower leg and neck.¹

On June 23, 1993 the Office of Workers' Compensation Programs accepted appellant's claim for cervical, thoracic and lumbosacral strain.

In a statement of accepted facts dated July 20, 1994, the Office noted that appellant underwent an authorized lumbar laminectomy.

In a medical report dated July 22, 1995, Dr. Roger P. Thorne, a Board-certified orthopedic surgeon, stated that appellant's condition was permanent.

By letter dated May 5, 1999, the Office requested that appellant provide a current medical report "which supports that your back condition has reached a permanent stationary level and explains how your back condition impairs your legs and the degree of permanent impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*."

In a report dated July 11, 1999, Dr. Thorne indicated that appellant had chronic complaints of back pain of moderate severity, that her pain precluded sitting for more than 15 to 20 minutes, that she must avoid bending, heavy lifting, stooping, pushing and pulling, and that she could not walk more than a few blocks without significant pain. In a report dated July 21, 1999, he stated that appellant had reached maximum medical improvement on that day.

¹ Appellant stopped work on June 1, 1994.

Dr. Thorne stated that appellant's L5 left nerve root was affected, that her pain was chronic and of moderate severity, and that there was no atrophy or weakness.

In a report dated July 29, 1999, an Office medical adviser reviewed appellant's medical records including Dr. Thorne's July 11 and 21, 1999 reports. He stated:

"This individual has pain that may interfere with activity, and is to be grade[d] a maximal grade III as per the Grading Scheme, found in chapter 3, 4th edition of the A.M.A., *Guides*. This would be a maximal 60 percent grade of a maximal 5 percent (L5 nerve root-table 83, page 130, chapter 3, 4th edition of the A.M.A., *Guides*). This would equate to a three percent impairment of the left lower extremity or leg for pain and/or altered sensation. Records indicate no weakness or atrophy, for a zero percent impairment. Records do not describe any restricted hip, knee, ankle, subtalar or toe motion, for a zero percent impairment. Utilizing the Combined Values Chart, the three percent impairment for pain factors, combined with zero for loss of motion, combined with zero for atrophy/weakness would be equivalent to a three percent impairment of the left lower extremity of leg. There would be a zero percent impairment of the right lower extremity or leg, with no documentation of right lower extremity symptomology. Date of maximum improvement would have been reached no later than April 21, 1999, several years following the June 1994 operative procedure."

By decision dated August 19, 1999, the Office granted appellant a schedule award for a three percent impairment of the left lower extremity. The period of the award ran for 8.64 weeks from April 21 to June 20, 1999.

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

Under section 8107 of the Federal Employees' Compensation Act,² and section 10.404 of the implementing federal regulations,³ 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 A.M.A., *Guides* (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.⁴

Dr. Thorne, a Board-certified orthopedic surgeon and appellant's attending physician, stated that appellant's L5 left nerve root was affected, that her pain was chronic and moderately severe, and that there was no atrophy or weakness in her back. He, however, did not specifically refer to the appropriate pages and tables of the A.M.A., *Guides* in his report.

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.404.

⁴ *Andrew Aaron, Jr.*, 48 ECAB 141 (1996).

The Office medical adviser, on the other hand, appropriately applied the A.M.A., *Guides* to Dr. Thorne's clinical findings. The Office medical adviser determined that, according to Table 83, page 130, chapter 3 of the A.M.A., *Guides*,⁵ appellant's pain interfered with activity, was graded at Grade III, and resulted in an impairment rating of three percent for the left lower extremity. He noted no weakness for atrophy or weakness or loss of range of motion. Dr. Thorne documented no right lower extremity symptomatology and the Office medical adviser thus found zero percent impairment. Using the Combined Values Chart, the Office medical adviser concluded that appellant had a three percent impairment of her left lower extremity.⁶

Accordingly, the Board finds that the weight of the medical evidence, based on the impairment determination of the Office medical adviser, establishes that appellant has no more than a three percent impairment of the left lower extremity.

The August 19, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 11, 2000

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁵ A.M.A., *Guides*, page 130, Table 83.

⁶ *Id.* at 322.