

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TIMOTHY M. COOGAN and DEPARTMENT OF JUSTICE,  
BUREAU OF PRISONS, Marion, IL

*Docket No. 98-2300; Submitted on the Record;  
Issued March 15, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing greater than an 18 percent permanent impairment of his left leg for which he received schedule awards.

On April 16, 1996 appellant, then a 46-year-old physician's assistant, filed a notice of traumatic injury and claim, alleging that on April 9, 1996 he sustained an acute lumbar muscle spasm injury to his left sciatica nerve, after turning to sneeze while in a U.S. attorney's office in response to a subpoena. The Office of Workers' Compensation Programs accepted appellant's claim for a recurrent ruptured herniated disc. Appellant filed a claim for a schedule award November 3, 1997. By decision dated December 9, 1997, the Office determined that appellant had an additional 7 percent permanent impairment of his left lower extremity for a total permanent impairment of 18 percent to his left leg.<sup>1</sup> Appellant received an additional 20.16 weeks of compensation for the period June 18 to November 6, 1997.

The Board has duly reviewed the entire case record on appeal and finds that this case is not in posture for decision.

Section 8107 of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified 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,

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<sup>1</sup> Appellant sustained a prior work-related injury to his back in 1991. In relation to that claim, No. 100403285, appellant received an 11 percent schedule award for loss of use of his left lower extremity beginning on or about November 11, 1995.

<sup>2</sup> 5 U.S.C. § 8107(c).

<sup>3</sup> 20 C.F.R. § 10.304.

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 Impairment* (fourth edition 1993) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.<sup>4</sup>

In the present case, the Office determined that appellant had an additional seven percent permanent impairment of his left lower extremity based on a report by Dr. Michael Boland, appellant's treating physician and internist, as reviewed by an Office medical adviser. Dr. Boland based his conclusion on the following physical findings: left lower extremity dysfunction with quite a bit of numbness in the left foot; persistent weakness with atrophy in the gastrocnemius muscle -- fully ambulatory and working full time; flexion of 45 degrees and extension of 10 degrees; lateral bend on either side of 5 degrees; 4/5 power in the left dorsiflexion and plantar flexion, ankle inversion remains stronger than eversion.

In a report dated August 9, 1997, an Office medical adviser and orthopedic surgeon, Carlo Bellabarba, noted the physical findings from Dr. Boland's report and applied them to the fourth edition of the A.M.A., *Guides* for an impairment rating. He determined that, in accordance with Table 83 of the A.M.A., *Guides* in combination with Table 11, appellant had a four percent permanent impairment of the left lower extremity due to Grade four radicular pain and loss of sensation in the L5 nerve root and also had a four percent permanent impairment of the left lower extremity due to S1 nerve root distribution.<sup>5</sup> Dr. Bellabarba also found a 6 percent permanent impairment for the 4/5 strength at the L5 nerve root and a four percent permanent impairment of the left lower extremity due to 4/5 strength at the S1 nerve root under Tables 83 and 12 of the A.M.A., *Guides*. Therefore, the Office medical adviser concluded that appellant had an 18 percent permanent impairment of the left lower extremity after adding the aforementioned impairments ratings. The Office medical adviser, in a note dated November 6, 1997, reported that appellant had received a past schedule award for a 25 percent permanent impairment of his right lower extremity and an 11 percent permanent impairment of his left lower extremity on or about November 11, 1993 and November 11, 1995 respectively. He concluded that, due to the prior schedule award for an 11 percent permanent impairment of the left lower extremity, the change in appellant's impairment rating for this extremity was 7 percent.

Appellant contends that he sustained greater than an 18 percent permanent impairment of his left leg, asserting that the June 18, 1997 report by Dr. Richard Morgan, Board-certified orthopedic surgeon, established that he had a 20 percent impairment beyond prior medical ratings. A review of that report reveals that Dr. Morgan stated that appellant's impairment from his April 1996 injury was 20 percent. He distinguished the present injury from prior medical conditions and/or prior injuries. However, Dr. Morgan does not provide a complete medical history for appellant or any statements that indicate that he was aware of the history of the prior

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<sup>4</sup> *Quincy E. Malone*, 31 ECAB 846 (1980).

<sup>5</sup> Pursuant to Table 11 of the A.M.A., *Guides*, a Grade 4 impairment is the equivalent of a 61 to 80 percent sensory deficit. Eighty percent multiplied by the 5 percent maximum allowed for pain and sensory loss at both the L5 and S1 levels under Table 83 equals a 4 percent impairment.

work-related injuries, and/or diagnoses of what the prior impairment rating was with respect to appellant's left lower extremity or the basis for that impairment rating. Therefore his conclusion that the degree of impairment was in addition to any prior findings is not rationalized as he made this determination without a proper foundation with respect to either appellant's history of injury or history of permanent impairment with respect to his left lower extremity. A physician's opinion that does not contain an accurate and complete history is of united probative value.<sup>6</sup>

Although the Office medical adviser provided sufficient information for review of his impairment rating concerning pain and sensory loss, his discussion is not sufficient to review his ratings of appellant's loss due to strength at the L5 and S1 levels. Specifically, the Office medical adviser does not indicate the grade of strength deficit he found from Dr. Boland's reported findings, and none of the clear valuations provided at Table 12 when applied to Table 83 provide the noted results. Thus, this case must be remanded for clarification of the Office medical adviser's findings in this regard.

The decision of the Office of Workers' Compensation Programs dated December 9, 1997 is remanded for further action consistent with this decision.

Dated, Washington, D.C.  
March 15, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>6</sup> *James A. Wyrich*, 31 ECAB 1805 (1980).