

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EFRAIN MOJICA and U.S. POSTAL SERVICE,  
POST OFFICE, San Juan, PR

*Docket No. 99-727; Submitted on the Record;  
Issued October 17, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has more than a 58 percent permanent impairment to his left leg.

In this case, the Office of Workers' Compensation Programs accepted that appellant sustained a left femur fracture, left knee laceration, left orbit fracture, and right wrist fracture in a motor vehicle accident in the performance of duty on March 4, 1988. In a decision dated September 11, 1995, the Office issued a schedule award for a 25 percent permanent impairment to the left leg. In a decision dated April 22, 1997, the Office issued a schedule award for an additional 15 percent to the left leg. By decision dated September 25, 1998, the Office issued a schedule award for an additional 18 percent permanent impairment to the left leg.<sup>1</sup>

The Board has reviewed the record and finds that the case is not in posture for decision.

Section 8107 of the Federal Employees' Compensation 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.<sup>2</sup> 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>3</sup>

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<sup>1</sup> The record also contains a June 30, 1998 Office decision, finding that appellant had not establish entitlement to a schedule award for loss of vision. Appellant did not request review of this decision.

<sup>2</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

<sup>3</sup> A. *George Lampo*, 45 ECAB 441 (1994).

In this case, appellant's attending physician, Dr. Dwight M. Santiago, an internist, submitted a report dated February 15, 1998, opining that appellant had a permanent impairment to the left leg of 64 percent. Dr. Santiago indicated that appellant had a 50 percent impairment for muscle weakness, a 5 percent impairment for limb length discrepancy, and 20 percent for venous insufficiency; combining the impairments under the Combined Values Chart (CVC) results in an impairment of 64 percent to the leg.<sup>4</sup>

In a report dated September 21, 1998, an Office medical adviser reviewed Dr. Santiago's report and concluded that appellant had a 58 percent left leg permanent impairment. This report is insufficient to establish the degree of permanent impairment and the record requires further development. With respect to muscle weakness, both Dr. Santiago and the Office medical adviser attempted to apply Table 39.<sup>5</sup> Dr. Santiago reported impairments for ankle flexion and extension weakness of 10 percent and 8 percent, but Table 39 provides specific impairments based on a grading of the impairment, and the minimal impairment, Grade 4, results in leg impairments of 17 percent and 12 percent.<sup>6</sup> The Office medical adviser appeared to recognize the provisions of Table 39 and assigned a 17 percent impairment for ankle flexion, but he also assigned 17 percent for ankle extension, instead of the 12 percent for a Grade 4 impairment.

For the hip and knee, both Dr. Santiago and the medical adviser properly record the Grade 4 impairment. If the Grade 4 impairments are combined under the CVC, the result is a 56 percent permanent impairment; Dr. Santiago found a 50 percent impairment and the Office medical adviser found a 58 percent impairment. As noted above, the medical adviser concluded that the total impairment was 58 percent. In this respect, he apparently failed to include the limb length impairment in his final calculation. The medical adviser reported an impairment of 5 percent for limb length discrepancy,<sup>7</sup> but did not combine this value with the weakness impairments. Moreover, the medical adviser stated that peripheral vascular disease was unrelated to the employment injury, and therefore the venous insufficiency impairment was not applied. This contradicts an earlier report dated January 17, 1997 from another medical adviser, who stated that a 20 percent impairment for peripheral vascular disease was reasonable under Table 14.<sup>8</sup> The Office included peripheral vascular disease impairment in its prior schedule award of April 22, 1997, and the September 21, 1998 report from the Office medical adviser does not address the prior schedule award or provide sufficient medical reasoning on the issue of causal relationship.

On remand, the Office should further develop the record and secure a reasoned medical report addressing the degree of employment-related permanent impairment for muscle weakness,

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<sup>4</sup> A.M.A., *Guides* (4<sup>th</sup> ed. 1993), 322, 24. The A.M.A., *Guides* note that the method for combining impairments is based on the idea that a second or succeeding impairment should apply not to the whole, but only to the part that remains after the first impairments have been applied.

<sup>5</sup> *Id.* at 77, Table 39.

<sup>6</sup> The criteria for grading the impairment is found in Table 38.

<sup>7</sup> *See id.* at 75, Table 35.

<sup>8</sup> *Id.* at 198, Table 14.

limb length discrepancy, venous insufficiency, and any other relevant impairment. After such further development as it deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated September 25, 1998 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC  
October 17, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member