U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROGER LAMAR SKINNER and U.S. POSTAL SERVICE,
POST OFFICE, Central Point, OR

Docket No. 00-1478; Submitted on the Record;
Issued April 2, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he has a permanent impairment for which he is entitled to a schedule award.

The Board finds that appellant did not meet his burden of proof to establish that he has a permanent impairment for which he is entitled to a schedule award.

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] 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, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The Office of Workers' Compensation Programs has adopted and the Board has approved, the use of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[3] as an appropriate standard for evaluating schedule losses.[4]

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.[5] Although the Office accepted appellant's claim for a work-related lumbar strain, a schedule award is not payable for the loss or loss of use, of a

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[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

[3] A.M.A., *Guides* (4th ed. 1993).

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

[5] *George E. Williams*, 44 ECAB 530, 533 (1993); *William Edwin Muir*, 27 ECAB 579, 581 (1976).

part of the body that is not specifically enumerated under the Act. Neither the Act nor its implementing regulations provides for a schedule award for impairment to the back or to the body as a whole.[6]

On October 1, 1977 appellant, then a 35-year-old letter carrier, filed a notice of occupational disease (Form CA-2) alleging that working conditions aggravated a preexisting lower back condition.[7]

The Office accepted that appellant's federal employment caused an aggravation of a preexisting spondylolisthesis at L5-S1 and approved his October 26, 1978 surgery. On that day, Dr. Richard E. James, Board-certified in orthopedic surgery and appellant's treating physician, performed an L5 laminectomy (Gill procedure) with L5-S1 bilateral fusion. In medical reports dated April 23, July 25 and October 17, 1979, he stated that appellant's surgical fusion was successful and that his neurological examinations were negative. On January 7, 1980 Dr. James released appellant to return to full duty.[8] On March 8, 1999 appellant filed a notice of occupational disease (Form CA-2) alleging that his recent severe hip and back pain were related to his 1978 surgery.

In a medical report dated April 5, 1999, Dr. Mark D. Patterson, Board-certified in orthopedic surgery, stated that appellant had done well after his L5-S1 surgical fusion until recently when he developed right hip and back pain while performing his usual work activities, that included standing and sorting mail and driving a delivery truck. He noted that appellant's examination revealed no disc herniations and that his "previous fusion seems to be solid." Dr. Patterson opined that appellant's "condition is best described as lumbar strain due to work exposure with preexisting lumbar spondylolisthesis."

On April 30, 1999 the Office accepted appellant's occupational disease claim for lumbar strain.[9]

In a medical report dated December 2, 1999, Dr. Daniel A. Saviers, Board-certified in physical medicine and rehabilitation, reported findings on examination and determined that appellant's lumbar spine condition rated an impairment category of 5. He noted appellant's fusion surgery, additional degenerative changes and ankle jerk reflexes which he then calculated to result in a 25 percent impairment of the whole body. In a medical report dated January 18, 2000, the Office medical adviser reviewed appellant's medical records including Dr. Saviers' December 2, 1999 report and recommended a zero percent impairment rating.

[6] *James E. Mills*, 43 ECAB 215, 219 (1991); *James E. Jenkins*, 39 ECAB 860, 866 (1990).

[7] The Board notes that this record contains documents not associated with this claim.

[8] The Board notes that the Office accepted appellant's November 16, 1994 work-related acute lumbar strain resolved no later than November 30, 1994.

[9] The Board notes that the Non-Fatal Summary (Form CA-800) recorded the Office's acceptance date as April 30, 1998.

By letter dated February 4, 2000 to Representative Greg Walden, appellant stated that he had been evaluated in November 1999 but that there had been no communication with the Office since that time.[10] By letter dated February 7, 2000, Congressman Walden's office referred appellant's request to the Office.

By decision dated February 23, 2000, the Office found that appellant had no ratable loss as a result of his work-related lumbar strain injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that he has a permanent impairment for which he is entitled to a schedule award.

In a medical report dated December 2, 1999, Dr. Saviers found that appellant's lumbar spine range of motion was 34 degrees flexion, 8 degrees extension, 7 degrees right side bending and 4 degrees left side bending. Appellant's deep tendon reflexes were 2 by 4 at bilateral knee jerks, 1 by 4 left ankle jerk and 0 by 4 for his right ankle jerk. Dr. Saviers noted that appellant had no sensory deficit in the lower extremities and his strength was 5 by 5 throughout the lower extremities with no radicular deficit in that regard. He noted that appellant had multilevel lumbar degenerative discs with Grade 3 spondylolisthesis at L5-S1, though appellant had surgical fusion at that level. Dr. Saviers further stated that appellant could bend, stoop, squat and twist on an occasional basis and could sit up to 50 minutes per episode for 4 hours a day and could stand and walk 20 minutes per episode for up to 4 hours per day. He also noted that appellant should rarely lift overhead and would have a lifting restriction of 35 pounds occasionally and 20 pounds with any frequency. Dr. Saviers restricted appellant to working no more than six hours a day for five days a week. With respect to appellant's impairment rating, Dr. Saviers relied on the A.M.A., *Guides* (4th ed. 1993) and stated that appellant's lumbar spine pathology was a category 5. He noted appellant's fusion surgery at L5-S1 with a Grade 3 spondylosis plus degenerative changes at multiple other levels that significantly restricted motion of the spine. In addition, appellant had "reduced and absent ankle jerk reflexes consistent with S1 level, which would correspond with L5-S1 level and spine pathology," which he calculated to result in a 25 percent impairment of the whole body.[11] In a medical report dated January 18, 2000, the Office medical adviser noted that appellant's postsurgical neurological reports were normal from Drs. James, Peterson and Saviers. He noted that he agreed with the findings of Dr. Saviers that appellant's fusion surgery at L5-S1 as a result of his spondylolisthesis "fits DRE (Diagnosis-Related Estimates) Impairment Category V, Table 72, p. 110.[12] However, the Board notes that as neither the Act nor the regulations provide for the payment of a schedule award for the whole person, no claimant is entitled to such an award.[13] The Office medical adviser further

[10] The Board notes that appellant intended to refer to Dr. Saviers' December 1999 disability impairment rating report although he stated that the evaluation was conducted in November 1999. Thus, the Office considered his letter to Congressman Walden to be a request for a schedule award.

[11] Dr. Saviers also evaluated appellant's cervical spine and right and left hips. However, the Office had accepted only appellant's lumbar strain injury.

[12] A.M.A., *Guides*, 110, Table 72. However, a schedule award is not payable under section 8107 of the Act for an impairment of the whole person. *See supra* 9.

[13] *See supra* note 9; *Gary L. Loser*, 38 ECAB 673 (1987).

found that the medical record revealed no loss of sensation or of motor function of a lumbar spinal nerve root as indicated in Table 83, p. 130[14] and that, therefore, there was no ratable lower extremity nerve root residuals as of October 17, 1979, the date of maximum medical improvement.[15] He correctly noted that Dr. Saviers' report did not show that appellant had any permanent impairment of his lower extremities and that, therefore, there was no basis under the A.M.A., *Guides* for a schedule award.

The February 23, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 2, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[14] *Id.*, 130, Table 83.

[15] In a medical report dated October 27, 1979, Dr. James stated that as of that date appellant had no evidence of neurological deficit.