

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BERTHA A. SLAUGHTER and DEPARTMENT OF THE AIR FORCE,  
McCLELLAN AIR FORCE BASE, CA

*Docket No. 02-1765; Submitted on the Record;  
Issued January 3, 2003*

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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 an eight percent permanent impairment of each lower extremity for which she received schedule awards.

On November 16, 1987 appellant, then a 36-year-old supply clerk, filed a claim for a traumatic injury occurring on November 10, 1987 in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for low back strain, lumbosacral neuritis, a bulging disc at L5-S1, psychogenic pain and depression. The Office further authorized a May 14, 1997 discectomy at L5-S1. Appellant stopped work on May 1, 1995 and did not return.

On March 16, 2001 appellant requested a schedule award.<sup>1</sup> By letter dated March 20, 2001, the Office requested that Dr. Mark N. Taylor, a Board-certified physiatrist and appellant's attending physician, evaluate the extent of appellant's permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001).

Dr. Taylor completed an impairment rating form for appellant's lower extremities on May 22, 2001. In an accompanying medical report dated June 6, 2001, Dr. Taylor stated:

"The date of maximum medical improvement for [appellant] in regards to her leg complaints that would be related to her back is May 22, 2001. The nerve root origin is probably L5 and S1 bilaterally. Her pain is constant and ranges from moderate to severe in the legs and low back with the leg pain frequently being predominant in comparison with the back pain.

"On manual muscle testing, pain interferes with [appellant's] efforts. I think she did the best she could. The maximum muscle strength was 4 over 5 to 4+ over 5

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<sup>1</sup> The Office denied appellant's prior claim for a schedule award by decision dated August 9, 1999 on the grounds that her leg condition was not permanent and stationary.

in the hip extensors, knee flexors and ankle dorsiflexors. In the ankle plantar flexor muscles and knee extensor muscles the strength was a bit more, 4+ to 5. The legs are relatively symmetrical in their strength.

“The bilateral knee arthritis that she has also interferes with the leg strength testing, knee flexors and knee extensors.”

Dr. Taylor found that appellant did not have any atrophy of her muscles but had lost “15 to 20 [percent] of her muscle strength in her legs due to pain with 10 to 15 [percent] loss of strength in the quadriceps and gastrocnemius and gastrosoleus muscles.” He further noted that rating appellant’s pain was difficult “due to the coexistent bilateral knee arthritis and [appellant’s] chronic pain syndrome.”

On June 30, 2001 an Office medical adviser reviewed Dr. Taylor’s May 22 and June 6, 2001 reports and concluded that appellant had an eight percent impairment of both legs. He stated:

“Moderate-severe pain would be graded a maximal [G]rade II as per Table 15-15, Determining Impairment due to Sensory Loss, or an 80 percent grade. Maximum percent loss of function due to sensory deficit or pain of L5 would be 5 percent and of S1 5 percent per Table 15-18, [p]age 424 of the fifth edition of the [A.M.A.,] *Guides*. 80 percent of this would be an 8 percent impairment of each lower extremity, or leg. This reviewer would not recommend any additional impairment due to atrophy or weakness, as this is secondary to pain and secondary to the osteoarthritis of the knees. The records do not document any loss of range of motion of the peripheral joints of either lower extremity due to the work-accepted back condition.

“These records would support an 8 percent impairment of each lower extremity, or leg, with date of maximum medical improvement reached by May 22, 2001, several years following the May 19, 1997 decompression and spinal fusion.”

By decision dated August 10, 2001, the Office granted appellant schedule awards for an eight percent impairment of the right and left legs. The period of the award ran for 46.08 weeks, from August 12, 2001 to June 30, 2002.

The Board finds that appellant has no more than an eight percent impairment of the right and left lower extremities for which she received schedule awards.

The schedule award provisions of the Federal Employees’ Compensation Act,<sup>2</sup> and its implementing federal regulations,<sup>3</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

claimants.<sup>4</sup> Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.<sup>5</sup>

In this case, the Office medical adviser properly applied the tables and pages of the A.M.A., *Guides* to the findings on physical examination of Dr. Taylor. He determined that, according to Table 15-18 on page 424 of the A.M.A., *Guides*, the maximum percentage loss of function of the L5 and S1 nerve roots affecting the lower extremity was five percent, respectively. He graded appellant's complaints of moderate to severe pain as 80 percent pursuant to Table 15-15 on page 424 of the A.M.A., *Guides*. The Office medical adviser multiplied the 5 percent impairment due to the nerve root impairments at L5 and S1 by the graded 80 percent impairment due to pain which yielded a 4 percent impairment of each nerve root. When the four percent impairments of the L5 and S1 nerve roots are combined using the Combined Values Chart on page 604 of the A.M.A., *Guides*, the total impairment of appellant's lower extremity is eight percent, bilaterally. The Office medical adviser noted that appellant's weakness was secondary to her pain and therefore did not require an additional impairment rating.

Accordingly, the Board finds that the weight of the medical evidence, based on the impairment determination by the Office medical adviser, establishes that appellant has no more than an eight percent impairment of the right and left lower extremities.

The decision of the Office of Workers' Compensation Programs dated August 10, 2001 is affirmed.

Dated, Washington, DC  
January 3, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>4</sup> 20 C.F.R. § 10.404(a).

<sup>5</sup> See FECA Bulletin No. 01-5, issued January 29, 2001.