

On November 20, 2001 appellant, then a 45-year-old casual employee, filed a traumatic injury claim (Form CA-1) alleging that she sustained a back injury while moving a cart on November 1, 2001. The Office accepted the claim for a herniated lumbar disc. Appellant underwent back surgery on March 28, 2002.

By letter dated October 11, 2002, the Office requested that appellant's attending orthopedic surgeon, Dr. Todd Volkman, submit a report regarding any permanent impairment. In a form report dated October 21, 2002, Dr. Volkman identified the S1 nerve root and reported a 10 percent whole person impairment.

On April 26, 2004 the Office prepared a statement of accepted facts and referred appellant to Dr. Raymond Fletcher, a Board-certified orthopedic surgeon. In a report dated July 12, 2004, he provided a history and results on examination. With respect to permanent impairment, he reported that under Table 15-18 appellant had a 6 percent leg impairment for L5 and S1 sensory nerve root impairment, and a 21 percent L5 and S1 motor nerve root impairment. He stated that under the Combined Values Chart "6 percent (sensory) + 22 percent [sic] (motor) = 24 percent left lower extremity impairment."

In a report dated July 23, 2004, an Office medical adviser reviewed the medical evidence and stated that he agreed with the 24 percent impairment rating. He did not provide further explanation.

By decision dated August 6, 2004, the Office issued a schedule award for a 24 percent permanent impairment to the left leg. The period of the award was 69.12 weeks of compensation commencing July 12, 2004.

In a decision dated February 1, 2005, an Office hearing representative reviewed the written record and affirmed the August 8, 2004 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for the permanent loss or loss of use of specified members, functions and organs of the body.² The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.³ The American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8107.

³ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁴ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

⁵ 20 C.F.R. § 10.404.

ANALYSIS

The schedule award issued in this case was based on the July 12, 2004 report of the second opinion physician, Dr. Fletcher. There are, however, deficiencies in Dr. Fletcher's report that render it unsuitable for a proper schedule award determination.

Dr. Fletcher referred to Table 15-18, which provides for nerve root impairment affecting the lower extremity. For the L5 nerve root, the maximum leg impairment for sensory deficit or pain is 5 percent, and 37 percent for loss of strength.⁶ The S1 nerve root also has a 5 percent maximum leg impairment for sensory deficit or pain, with a 20 percent maximum for loss of strength.⁷ The proper procedure under the A.M.A., *Guides* is to consider each nerve root separately and grade the impairment under Table 15-15 (for sensory deficit or pain) and Table 15-16 (for motor impairments).⁸ Dr. Fletcher did not discuss these tables, follow the appropriate procedure or clearly explain how he derived his impairment ratings. He initially reported, for example, a 21 percent motor impairment, and then reported a 22 percent impairment. Dr. Fletcher did not identify the degree of motor impairment for the L5 and S1 nerve roots individually or explain how they were calculated using Table 15-18 and 15-16. Moreover, the Combined Values Chart was not used correctly. Dr. Fletcher stated that combining 6 percent and 22 percent was a 24 percent impairment, but under the chart this results in a 27 percent impairment.⁹ The Office medical adviser adopted these findings without further explanation.

The case will be remanded to the Office to secure probative medical evidence that properly determines the degree of permanent impairment to the left leg under the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The medical evidence of record was not sufficient to establish that the schedule award for a 24 percent permanent impairment to the left leg was appropriate under the A.M.A., *Guides* and the case will be remanded for further development.

⁶ A.M.A., *Guides* 424, Table 15-18.

⁷ *Id.*

⁸ *Id.* at 423.

⁹ *Id.* at 604, Combined Values Chart. The A.M.A., *Guides* provides for the combining, rather than addition, of some impairments to account for the effects of multiple impairments with a summary value that cannot exceed 100 percent.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 6, 2005 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 19, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board