

On May 25, 1999 appellant, then a 43-year-old custodial laborer, filed a traumatic injury claim alleging that he sustained back and lower extremity injuries when he was mopping the floor at work on May 24, 1999. He stopped work for various periods and periodically performed limited-duty work for the employing establishment.

The Office accepted that appellant sustained an employment-related lumbar strain/sprain and herniated nucleus pulposus disc at L5-S1.<sup>1</sup>

On May 2004, appellant filed a claim alleging that he had employment-related impairment which entitled him to schedule award compensation.

In a report dated December 6, 2004, Dr. James P. Dambrogio, an attending osteopath, provided an assessment of permanent impairment under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001). He indicated that, due to his May 24, 1999 employment injury, appellant had a 15 percent impairment due to sensory loss associated with his L3, L4, L5 nerve root distributions which extended from his back into his right leg. Dr. Dambrogio determined that appellant had a 30 percent impairment due to limited knee motion, a 7 percent impairment due to gait derangement, a 4 percent impairment due to meniscectomy surgery of one knee and a 4 percent impairment due to pain (under Tables 18-4 and 18-5 on pages 576 to 580 of the A.M.A., *Guides*). He posited that he had an 11 percent impairment due to erectile dysfunction because, according to Table 7-5 of the A.M.A., *Guides*, appellant's condition fell within Class 2 meaning that sexual function was possible with sufficient erection but with impaired ejaculation and sensation.<sup>2</sup>

On April 12, 2005 the Office medical adviser reviewed the report of Dr. Dambrogio and determined that, under the relevant standards of the A.M.A., *Guides*, appellant had a six percent impairment of his right leg. He calculated that, according to Tables 15-15 and 15-18 on page 424 of the A.M.A., *Guides*, he had a total impairment due to sensory loss of his L3, L4 and L5 nerve root distributions of 3.75 percent.<sup>3</sup> The Office medical adviser added this figure to a two percent figure for pain (under Figure 18-1 on page 574) and rounded up the resultant figure to six percent. He indicated that Dr. Dambrogio was not qualified to provide an opinion on appellant's erectile dysfunction but rather that an evaluation should be provided by a urologist.

By decision dated May 11, 2005, the Office granted appellant a schedule award for a six percent impairment of his right leg. The award ran for 17.28 weeks from December 6, 2004 to April 5, 2005.

Appellant requested a review of the written record of his claim by an Office hearing representative. He claimed that he was entitled to greater compensation for impairment of his lower extremities and that he was entitled to schedule award compensation for employment-related impairment of his penis.

In a decision dated and finalized November 14, 2005, the Office hearing representative set aside the Office's May 11, 2005 decision and remanded the case to the Office for further

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<sup>1</sup> The Office previously accepted that appellant sustained several employment-related injuries, including a lumbar strain and left knee sprain on March 31, 1998 (File No. 030234119) and a thoracic strain/sprain on July 22, 1998 (File No. 030236543).

<sup>2</sup> Appellant reported that since the May 24, 1999 injury he suffered erectile dysfunction and required medication to be able to perform.

<sup>3</sup> He determined that appellant had a 1.25 impairment for each of the three nerve distributions.

development of the evidence. He indicated that documents from appellant's March 31 and July 22, 1998 employment injuries should be added to the record in order to better evaluate his claimed entitlement to schedule award compensation. The Office hearing representative indicated that appellant should be referred to a urologist for an opinion regarding whether he had employment-related erectile dysfunction which entitled him to a schedule award.<sup>4</sup> He stated that, after such further development, "the case should be forwarded to the [Office medical adviser] for review and a determination of any impairment indicated for all conditions resultant from his lumbosacral injuries."

The Office referred appellant to Dr. Alexander D. Limkakeng, a Board-certified urologist, for examination and evaluation regarding his claimed impairment.

In a report dated January 3, 2006, Dr. Limkakeng stated that appellant reported that he experienced erectile dysfunction for about seven years and that he was able to perform sometimes but was only semirigid. He indicated that appellant had a history of diabetes, hypertension and multiple sclerosis and stated that examination of his penis and testicles revealed normal size and shape with no masses or Peyronie's plaque. Dr. Limkakeng noted that sacral dermatone and sensory testing of appellant's penis were 4+ and indicated that he should undergo Rigiscan testing.

In a supplemental report dated January 30, 2006, Dr. Limkakeng reported similar findings on examination and indicated that there was no response on the first night of Rigiscan testing but that the second and third nights showed "disassociation following a normal tumescence of both the tip of the penis and the base of the penis, but the tip of the penis has decreased rigidity both on the second and third nights." He diagnosed "erectile dysfunction from vascular causes" and provided an impairment rating of "0 to 10 percent of whole person."

In an accompanying letter dated January 30, 2006, Dr. Limkakeng answered several questions posed by the Office. In response to the question of whether appellant continued to suffer "residuals of the injury," he stated that appellant continued "to have back pain which goes to the left groin and at times, the right groin, which is a factor in preventing him from performing and being able to have a successful intercourse." In response to the question of how he "arrived with the impairment rating," Dr. Limkakeng indicated that he used Table 7-5 on page 156 of the fifth edition of the A.M.A., *Guides* to find that appellant fell under Class 1 of that table. He stated that Rigiscan testing showed that he had no erection at the tip of the penis with erection only at the base of the penis.

In February 2006, the Office referred the case record to Dr. Morley Slutsky, an Office medical adviser, Board-certified in occupational medicine.

In a report dated February 12, 2006, Dr. Slutsky stated that he had no medical reports showing that appellant had a lumbar nerve root pathology. He posited that sacral nerve root pathology (rather than lumbar nerve root pathology) may lead to erectile dysfunction but, that

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<sup>4</sup> It appears that additional documents were added to the record after the November 14, 2005 decision, but it is unclear whether all of the relevant documents pertaining to appellant's March 31 and July 22, 1998 employment injuries were added to the record.

“there is no lower extremity impairment specific to these sacral nerves.” Dr. Slutsky noted that his impairment regarding appellant’s condition was based on the limited information presented to him and stated:

“The most appropriate way to rate [appellant’s] sexual dysfunction is the way Dr. Limkakeng has documented. He rated this condition using Table 7-5, page 156, Criteria for Rating Permanent Impairment Due to Penile Disease, Class 1. Based upon this table, the final impairment is 10 percent whole person impairment.”

In an email transmission sent on March 1, 2006, Dr. Slutsky stated:

“The actual penile dysfunction is due to vascular disease (not work related). What the treating physician indicated was that the back pain prevented [appellant] from being sexually active and he provided the only rating he could based upon the above conditions. This amounted to 10 percent whole person (based on Table 7-5). Unfortunately there is no “penile dysfunction” rating versus whole person impairment rating in the [A.M.A., *Guides*]. The only other option is to try to rate a spinal impairment (which is not as specific as this impairment rating) and would not be accepted by the department either because it is whole person impairment as well.”

By decision dated March 7, 2006, the Office determined that the weight of the medical evidence, as represented by the opinion of Dr. Limkakeng, showed that appellant was not entitled to schedule award compensation for employment-related impairment of his penis. The Office stated that the “evidence supports that you have a six percent impairment of your right leg due to effects of your injuries.”

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking compensation under the Federal Employees’ Compensation Act<sup>5</sup> has the burden of establishing the essential elements of his claim, including that he sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.<sup>6</sup>

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> See *Bobbie F. Cowart*, 55 ECAB \_\_\_\_ (Docket No. 04-1416, issued September 30, 2004). In *Cowart*, the employee claimed entitlement to a schedule award for impairment of her left ear due to employment-related hearing loss. The Board determined that she did not establish that an employment-related condition contributed to her hearing loss and, therefore, it denied her claim for entitlement to a schedule award for the left ear.

one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup>

The schedule award provision of the Act<sup>8</sup> and its implementing regulation<sup>9</sup> sets 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 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>10</sup>

The Act provides schedule award compensation for employment-related impairment of the sexual and urinary functions of the penis, but it must be shown that a claimant's sexual or urinary difficulties are related to employment factors through the submission of rationalized medical evidence establishing such a causal relationship.<sup>11</sup> Permanent impairment must be based on a direct physiological connection between the employment injury and the part of the body for which a schedule award is claimed.<sup>12</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained a lumbar strain and herniated disc at L5-S1 due to mopping at work on May 24, 1999. It previously accepted that he had sustained several other employment-related injuries, including a lumbar strain and left knee sprain on March 31, 1998 and a thoracic strain/sprain on July 22, 1998. Appellant received a schedule award on May 11, 2005 for a six percent impairment of his right leg and then claimed that he was entitled to greater compensation for impairment of his lower extremities and that appellant was entitled to schedule award compensation for employment-related impairment of his penis. The Office denied appellant's claim for schedule award compensation for employment-related impairment of his penis.

The Board finds that appellant did not submit sufficient medical evidence to establish that he is entitled to schedule award compensation for employment-related impairment of his penis.

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<sup>7</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> 20 C.F.R. § 10.404 (1999).

<sup>10</sup> *Id.*

<sup>11</sup> See 20 U.S.C. § 10.404(a); *Gordon G. McNeill*, 40 ECAB 790, 795 (1989); *William T. Trull*, 36 ECAB 659, 663-64 (1985).

<sup>12</sup> *Gregory C. Esparza*, 42 ECAB 911, 915 (1991).

In support of his claim, appellant submitted a December 6, 2004 report in which Dr. Dambrogio, an attending osteopath, provided an assessment of whether he sustained an employment-related impairment of his penis. Dr. Dambrogio stated that appellant had an 11 percent impairment due to erectile dysfunction because, according to Table 7-5 of the A.M.A., *Guides*, his condition fell within Class 2 meaning that sexual function was possible with sufficient erection but with impaired ejaculation and sensation.<sup>13</sup>

This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Dambrogio did not provide adequate medical rationale in support of his conclusion on causal relationship.<sup>14</sup> Dr. Dambrogio did not provide any explanation of his apparent opinion that appellant had an employment-related impairment of his penis. He provided a limited discussion of his accepted employment injuries, which principally involved his back and did not provide any explanation of how they could have been competent to cause impairment in another part of the body. Dr. Dambrogio's opinion does not contain a complete assessment of appellant's numerous medical conditions<sup>15</sup> and he did not explain why his claimed impairment of his penis was not due to some nonwork-related condition.

Other medical evidence of record is either equivocal regarding the cause of appellant's claimed impairment of his penis or provides an opinion that his claimed impairment was not related to employment factors.<sup>16</sup> In reports dated January 30, 2006, Dr. Limkakeng, a Board-certified urologist, who served as an Office referral physician, provided conflicting statements regarding the cause of appellant's claimed impairment of his penis. On the one hand, he suggested that his claimed impairment was not employment related when he indicated that appellant had "erectile dysfunction from vascular causes." Appellant's case has not been accepted for any employment-related vascular condition. On the other hand, Dr. Limkakeng suggested the existence of an employment-related cause when he stated that appellant continued "to have back pain which goes to the left groin and at times, the right groin, which is a factor in preventing him from performing and being able to have a successful intercourse."<sup>17</sup> Dr. Limkakeng did not, however, provide any notable description of appellant's employment injuries or explain the medical process through which they caused pain that led to impairment of the penis.

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<sup>13</sup> A.M.A., *Guides* 156, Table 7-5.

<sup>14</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>15</sup> See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

<sup>16</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship).

<sup>17</sup> Dr. Limkakeng stated that he used Table 7-5 on page 156 of the fifth edition of the A.M.A., *Guides* to find that appellant fell under Class 1 of that table and indicated that he had an impairment rating of "0 to 10 percent of whole person."

In a February 12, 2006 report and a March 1, 2006 email transmission, Dr. Slutsky, a Board-certified occupational medicine physician, who served as an Office medical adviser, provided an opinion that appellant's claimed impairment of his penis was not related to his employment injuries. He posited that his claimed impairment was due to a nonwork-related vascular condition which affected his penis. Dr. Slutsky stated that sacral nerve root pathology (rather than lumbar nerve root pathology) may lead to erectile dysfunction, but that "there is no lower extremity impairment specific to these sacral nerves."<sup>18</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

As noted above, a claimant has the burden of establishing the essential elements of his claim, including that he sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.<sup>19</sup> In determining whether a claimant has discharged his burden of proof and is entitled to compensation benefits, the Office is required by statute and regulations to make findings of fact.<sup>20</sup> Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would tend to overcome it."<sup>21</sup> These requirements are supported by Board precedent.<sup>22</sup>

### **ANALYSIS -- ISSUE 2**

By decision dated and finalized November 14, 2005, an Office hearing representative set aside the Office's May 11, 2005 decision which granted appellant a schedule award for a six percent impairment of his right leg and remanded the case to the Office for further development of the evidence. He indicated that, in addition to developing the matter of appellant's claimed penis impairment, the Office should make a determination regarding all other forms of schedule award compensation appellant might be entitled to, including schedule award compensation for impairment of the lower extremities. In its March 7, 2006 decision, the Office denied his claim for impairment of his penis and stated that the "evidence supports that you have a six percent impairment of your right leg due to effects of your injuries."

The Board finds that the Office has not adequately explained its apparent determination that appellant does not have more than a six percent impairment of his right leg. The record does not contain any Office decision which explains the Office's rationale in determining that

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<sup>18</sup> Dr. Slutsky concluded that the best way to rate appellant's nonwork-related sexual dysfunction was to assign him a Class 1 rating under Table 7-5 such that he had a 10 percent impairment of the whole person.

<sup>19</sup> See *supra* note 6 and accompanying text.

<sup>20</sup> 5 U.S.C. § 8124(a) provides: "The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office "shall contain findings of fact and a statement of reasons."

<sup>21</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

<sup>22</sup> See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

appellant only is entitled to schedule award compensation for a six percent right leg impairment. After the Office hearing representative set aside the Office's May 11, 2005 schedule award for a six percent impairment of his right leg, the Office issued a March 7, 2006 decision which apparently expressed agreement with the level of schedule award compensation granted by the May 11, 2005 award of compensation.<sup>23</sup> However, the Office's March 7, 2006 decision did not provide any explanation of this apparent determination and several questions remain unanswered regarding the calculation of the permanent impairment of appellant's lower extremities.<sup>24</sup>

Given the Office's inadequate explanation for its determination regarding appellant's right leg impairment, it cannot be said that the Office, with respect to this matter, has provided clear reasoning which allows appellant to fully understand the precise defect of his claim. Therefore, the case should be remanded to the Office for further consideration of the question of whether appellant met his burden of proof to establish that he has more than a six percent impairment of his right leg. After such development it deems necessary, the Office should issue an appropriate decision with adequate findings.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he is entitled to schedule award compensation for employment-related impairment of his penis. The Board further finds that the case is not in posture for decision regarding whether he met his burden of proof to establish that he has more than a six percent impairment of his right leg, for which he received a schedule award.

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<sup>23</sup> It should be noted that it appears that additional documents were added to the record after the November 14, 2005 decision of the Office hearing representative, but it is unclear whether all of the relevant documents pertaining to appellant's March 31 and July 22, 1998 employment injuries were added to the record.

<sup>24</sup> For example, the Office accepted that appellant sustained an employment-related knee injury and there is medical evidence that suggests that he has impairment due to limited knee motion. However, it is not clear why the Office apparently did not include limited knee motion in its calculation of permanent impairment. See A.M.A., *Guides* 540, Tables 17-20 through 17-23. The Office seems to have based its award for a six percent impairment of the right leg on sensory loss associated with the L3, L4 and L5 nerve root distributions, but it remains unclear how the Office determined the grade level of this sensory loss. See A.M.A., *Guides* 424, Tables 15-15 and 15-18.



**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' March 7, 2006 decision is affirmed with respect to its denial of appellant's claim for schedule award compensation due to impairment of his penis. The March 7, 2006 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board regarding whether he met his burden of proof to establish that he has more than a six percent impairment of his right leg, for which appellant received a schedule award.

Issued: October 2, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board