

On March 24, 2004 Dr. Robert A. Nelson, the attending orthopedic surgeon, reported that electrodiagnostic testing revealed significant neurological impairment to both lower extremities. He found sensory deficits of 4 percent for both the L4 and L5 nerve roots in each lower extremity, or a total of 16 percent. Dr. Nelson also found motor deficits of 8.2 percent for each of the four nerve roots, or a total of 33 percent. He stated: "Finally, if we now calculate the total percentage disability, sensory + motor deficits, 16 + 33 = 49 percent."

The Office medical adviser reviewed Dr. Nelson's report. He rated a 24 percent permanent impairment of each lower extremity.

In a decision dated June 13, 2006, the Office issued a schedule award for a 24 percent permanent impairment of each lower extremity.

Appellant requested reconsideration. He noted that Dr. Nelson had reported a 49 percent permanent impairment of his lower extremities, not 48. Appellant also argued that he was entitled to 288 weeks' compensation under the law. In a decision dated July 24, 2006, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.²

ANALYSIS

Dr. Nelson, the attending orthopedic surgeon, followed the grading scheme and procedure set out in Chapter 15.12, page 423, of the A.M.A., *Guides*. He identified L4 and L5 as the affected nerve roots. According to Table 15-18, page 424, the most an L4 or L5 nerve root can impair the lower extremity due to sensory deficit is five percent. Under Table 15-15 Dr. Nelson classified the severity of the sensory deficit as Grade 2, "Decreased superficial cutaneous pain and tactile sensibility (decreased protective sensibility), with abnormal sensations or moderate pain, that may prevent some activities." The maximum sensory deficit for this classification is 80 percent. Multiplying the maximum sensory deficit, 80 percent, by the maximum impairment value of each affected nerve, 5 percent, Dr. Nelson correctly found that appellant had a 4 percent impairment due to each of the four nerve roots, or 8 percent for each lower extremity.

The maximum percentage loss of function due to motor deficit of the L4 nerve is 34 percent under Table 15-18. The maximum loss due to motor deficit of the L5 nerve is 37

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001).

percent. Under Table 15-16 Dr. Nelson classified the severity of the motor deficit as Grade 4, "Active movement against gravity with some resistance." The maximum motor deficit for this classification is 25 percent. Following the same procedure as with sensory deficits, appellant has an 8.5 percent impairment of each lower extremity due to motor deficit of the L4 nerve root ($0.25 \times 0.34 = 0.085$). He also has a 9.25 percent impairment of each lower extremity due to motor deficit of the L5 nerve root ($0.25 \times 0.37 = 0.0925$). Together, appellant has a 17.75 percent impairment of each lower extremity due to motor deficits of the affected nerve roots, which rounds to 18 percent.³

The A.M.A., *Guides* states that if there is both sensory and motor impairment of a nerve root, the impairment percents are combined using the Combined Values Chart on page 604.⁴ For each lower extremity, 18 percent for motor deficits combines with eight percent for sensory deficits for a total of 25 percent. The Board finds that appellant has 25 percent impairment to each lower extremity. Appellant is therefore entitled to compensation for an additional one percent impairment of each lower extremity.

Dr. Nelson's estimate diverged from the A.M.A., *Guides* by underreporting the maximum percentage loss of function due to motor deficit as 32 percent for each nerve root. Moreover, he simply added the sensory and motor impairments together, rather than combine them under the Combined Values Chart, as the A.M.A., *Guides* instructs. The Office medical adviser appears to have rounded incorrectly.

As for the number of weeks of compensation to which appellant is entitled, he correctly points out that section 8107(c)(2) of the Act provides 288 weeks' compensation for a leg lost. But that is for a complete, 100 percent loss of use of the leg, as with amputation at the hip. Section 8107(c)(19) clarifies that compensation for partial loss, as in this case, is compensated proportionately. So a 25 percent impairment of each lower extremity is 25 percent of 288 weeks' compensation or 72 weeks, or 144 weeks' compensation for the both. This is 5.76 weeks more than the Office awarded.

CONCLUSION

The Board finds that appellant has a 25 percent permanent impairment of each lower extremity and is entitled to a total of 144 weeks of compensation for his impairments.

³ Percentages should not be rounded until the final percent for award purposes is obtained. Fractions should be rounded down from .49 or up from .50. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4.b(2) (September 1994).

⁴ A.M.A., *Guides* 423.

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2006 decision of the Office of Workers' Compensation Programs is affirmed, as modified.⁵

Issued: March 28, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁵ The Office's July 24, 2006 decision denying a review of the merits is moot.