

On September 29, 2003 appellant, then a 38-year-old maintenance mechanic, filed a traumatic injury claim alleging that he injured his left heel while climbing stairs to respond to a fire. The Office accepted his claim for a contusion of the left foot and a herniated disc in his lumbar spine. On December 1, 2004 appellant filed a claim for a schedule award.

In a report dated November 17, 2004, Dr. Mark B. Hartman, an attending orthopedic surgeon, stated that neurological examination of appellant's lower extremities revealed muscle strength of 5/5, decreased sensation at L5-S1, an absent S1 reflex and chronic pain. He indicated that appellant had a 20 percent permanent impairment of the left lower extremity.<sup>1</sup>

On December 17, 2004 the Office asked Dr. Hartman to provide an impairment rating for appellant based on application of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, the A.M.A., *Guides*) (5<sup>th</sup> ed. 2001). The Office provided instructions and a calculation form explaining how to apply the applicable section of the A.M.A., *Guides* regarding spinal peripheral nerve injuries in making a determination of appellant's impairment.

In response to the Office's letter, Dr. Hartman indicated that appellant had a 20 percent permanent impairment of the left lower extremity, for decreased sensation deficit, pain or discomfort due to spinal peripheral nerve root impairment, and 10 percent, for decreased motor function due to spinal peripheral nerve root impairment.<sup>2</sup>

In a January 28, 2004 memorandum, the Office medical adviser, stated that appellant had a four percent permanent impairment of the left lower extremity based on the physical findings in Dr. Hartman's November 17, 2004 report. He stated:

"Per A.M.A., *Guides*, fifth [e]dition, Table 15-15 [at page] 424 [appellant] has Grade 2 sensory loss for 80 percent of maximum. Per Table 15-18, the maximum for [the] L5 [nerve] root is 5 percent. Thus 80 percent of 5 percent is 4 percent PPI [permanent partial impairment] of the left lower extremity, for pain impairment of the LLE [left lower extremity]."

By decision dated August 31, 2005, the Office granted appellant a schedule award for 11.52 weeks based on a 4 percent permanent impairment of the right lower extremity.<sup>3</sup>

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<sup>1</sup> Dr. Hartman indicated that appellant had a 12 percent impairment of the spine based on state workers' compensation law. Under the Federal Employees' Compensation Act, a schedule award is not payable for the loss or loss of use of any member of the body or function that is not specifically enumerated in section 8107 of the Act or its implementing regulations. See *Leroy M. Terska*, 53 ECAB 247 (2001). The back is specifically excluded from coverage of the schedule award provisions of the Act. 5 U.S.C. § 8101(19). Although a schedule award may not be issued for an impairment to the back under the Act, such an award may be payable for permanent impairment of the lower extremities that is due to an employment-related back condition. *Gordon G. McNeill*, 42 ECAB 140 (1990).

<sup>2</sup> The Board notes that the Office's spinal peripheral nerve impairment calculation form provided to Dr. Hartman refers to loss of function due to decreased "strength," rather than motor deficit. However, lower extremity muscle strength impairment is addressed in section 17.2e of the A.M.A., *Guides*, titled "Manual Muscle Testing" and states that, "Weakness caused by an identifiable motor deficit of a specific peripheral nerve should be assessed according to section 17.2l, [p]eripheral [n]erve [i]njuries." A.M.A., *Guides*, 531, see also Table 17-1 at page 525. Impairment due to loss of muscle strength may not be combined with impairment due to spinal peripheral nerve injury. A.M.A., *Guides* 526, Table 17-2.

<sup>3</sup> The Board notes that the Office decision incorrectly granted the schedule award for appellant's right lower extremity, rather than the left.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>4</sup> and its implementing regulation<sup>5</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*<sup>6</sup> has been adopted by the implementing regulation as the appropriate standard for evaluating scheduled losses.<sup>7</sup>

### **ANALYSIS**

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is required.

Dr. Hartman indicated that neurological examination of appellant's lower extremities revealed normal muscle strength of 5/5, decreased sensation at L5-S1, an absent S1 reflex and chronic pain. He indicated that appellant had a 20 percent permanent impairment of the left lower extremity. In a supplemental report, Dr. Hartman indicated that appellant had a 10 percent impairment of the left lower extremity, for sensory deficit, pain or discomfort due to spinal peripheral nerve root impairment, and 10 percent, for decreased motor function due to spinal nerve root impairment. However, he did not explain, how he made this impairment estimate with reference to the applicable sections of the A.M.A., *Guides*.

The Office medical adviser applied Dr. Hartman's findings to the A.M.A., *Guides* and determined that appellant had a four percent permanent impairment of the left lower extremity based on Table 15-15 at page 424 (Grade 2 sensory loss, maximum of 80 percent) and Table 15-18 (maximum of 5 percent for the L5 nerve root multiplied by 80 percent for Grade 2 equals 4 percent).<sup>8</sup> However, Dr. Hartman indicated that, in addition to a 10 percent impairment for sensory deficit due to spinal peripheral nerve root impairment, appellant had a 10 percent impairment for loss of motor function due to spinal peripheral nerve root impairment.<sup>9</sup> The

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

<sup>9</sup> Because, Dr. Hartman did not provide sufficient physical findings which would indicate the severity of the loss of motor function needed for determining impairment under the A.M.A., *Guides*, on remand the Office should seek additional information from him on this point.

Office medical adviser did not address why he did not include impairment due to loss of motor function in his impairment rating for appellant.

### **CONCLUSION**

The Board finds that this case requires further development of the medical evidence. On remand, the Office should seek clarification from Dr. Hartman as to the degree of appellant's loss of motor function due to his spinal peripheral nerve injury so that this information may be applied to the A.M.A., *Guides* for determination of appellant's impairment due to motor deficit. After such further development as it deems necessary, the Office should issue an appropriate decision on appellant's schedule award claim.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 31, 2005 is set aside and the case remanded for further development consistent with this decision.

Issued: January 17, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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