

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES W. BOHN and DEPARTMENT OF THE NAVY,
NORFOLK NAVAL SHIPYARD, Portsmouth, Va.

*Docket No. 97-257; Submitted on the Record;
Issued December 1, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to a schedule award for a permanent impairment of his left lower extremity causally related to a July 23, 1993 employment-related injury.

On July 23, 1993 appellant, then a 36-year-old pipefitter, sustained an employment-related acute lumbar strain with herniated nucleus pulposus, and subsequently underwent an authorized microdiscectomy at L5-S1. The Office of Workers' Compensation Programs paid appellant appropriate compensation benefits. On November 9, 1994 appellant filed a claim for a schedule award. In support of his claim, appellant submitted a medical report dated November 7, 1994, from Dr. Richard McAdam, a Board-certified neurological surgeon and appellant's treating physician, in which the physician stated that appellant had reached maximum medical improvement and had a 10 percent permanent impairment of the left lower extremity.

By letter dated November 21, 1994, the Office asked Dr. McAdam to evaluate appellant pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*¹ (hereinafter, A.M.A., *Guides*).

In a report dated December 12, 1994, Dr. McAdam stated that appellant had "approximately 10 percent permanent ... disability based on pain in the back reflected in the left lower extremities status post-lumbar discectomy." Dr. McAdam did not reference the A.M.A., *Guides*.

In a letter dated September 12, 1995, the Office advised appellant that Dr. McAdam's report was insufficient to establish his entitlement to a schedule award and requested that appellant submit a medical report which contained a disability rating based on the A.M.A., *Guides*. Appellant did not respond to the Office's September 12, 1995 request.

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).

In a decision dated October 16, 1995, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence failed to demonstrate that appellant had sustained a ratable permanent impairment as a result of his employment-related injury.

On September 26, 1995 and February 20, April 26 and July 12, 1996, appellant requested reconsideration of the Office's October 16, 1995 denial and submitted additional medical evidence in support of his requests. In decisions dated January 18, February 28, June 4 and August 26, 1996, the Office denied appellant's requests for reconsideration on the grounds that the medical evidence of file was insufficient to establish appellant's entitlement to a schedule award.

In addition to the evidence previously discussed herein, the relevant medical evidence includes a September 26, 1995 report in which Dr. McAdam attempted to evaluate appellant pursuant to the A.M.A., *Guides*, noted that appellant continued to have mild pain reflected into the left lower extremity post microdiskectomy, and concluded that under the A.M.A., *Guides*, appellant warranted a 10 percent permanent disability relative to the lumbar disk herniation that required surgical treatment. Dr. McAdam explained that the A.M.A., *Guides* allowed a five to ten percent impairment rating, and that he felt that a full ten percent was warranted because of the persistence of appellant's leg pain. Dr. McAdam did not reference any specific portion of the A.M.A., *Guides*.

In a report dated January 12, 1996, an Office medical adviser reviewed Dr. McAdam's September 26, 1995, report and advised that as the Federal Employees' Compensation Act does not provide for schedule awards for the spine, an application for an award must have specific reference to the involvement of an extremity, with specific citations to the tables and figures contained in the A.M.A., *Guides*.

Dr. McAdam provided several supplemental medical reports. In a report dated February 6, 1996, the physician stated that appellant continued to have pain reflected in the left lower extremity and that this lower extremity pain was the basis for his earlier determination that appellant has a ten percent permanent disability. In a report dated April 19, 1996, Dr. McAdam provided a more detailed explanation of his findings, stating that "[a]ccording to the A.M.A., *Guides to the Evaluation of Permanent Impairment*, Fourth Edition, page 3/113, under the second chart II, section E, this man has a 10 percent permanent ... disability. This is based on a surgically treated disk lesion with residual medically documented pain and rigidity with pain reflected into the lower extremity."

In a report dated June 5, 1996, after reviewing Dr. McAdam's April 19, 1996 report, the Office medical adviser reiterated that schedule awards are not available for back injuries and that therefore, Dr. McAdam's citations to that portion of the A.M.A., *Guides* pertaining specifically to injuries of the back could not support appellant's claim for entitlement. The Office medical adviser additionally noted that the extent of appellant's lower extremity impairment could not be assessed because specific citations to the A.M.A., *Guides* relating to the lower extremity were missing from Dr. McAdam's report, and in particular, the specific nerve distribution for appellant's intermittent leg pain was lacking.

Dr. McAdam submitted a supplemental report dated July 9, 1996, on a Form CA-1303 provided by the Office for the purpose of rating schedule awards. On this form Dr. McAdam indicated that appellant had reached maximum medical improvement on February 15, 1994, that the nerve root origin and specific nerve branch affected was the first sacral nerve root, that the degree of permanent impairment of the lower extremity due to loss of function from sensory deficit, pain or discomfort was 10 percent, and that there was no permanent impairment due to loss of function from decreased strength.

In a report dated August 22, 1996, the Office medical adviser again reviewed the medical evidence of record and stated that as no new medical evidence had been submitted, further analysis of the claim was not warranted.

Under section 8107 of the Act² and section 10.304 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

No schedule award is payable, however, for a member, function, or organ of the body not specified in the Act or in the regulations.⁵ This principle applies to body members that are not enumerated in the schedule award provision before the 1974 amendment as well as to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment.⁶ The Act itself, however, specifically excludes the back from the definition of “organ.”⁷

In 1960, amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Thus, a claimant may be entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the neck, shoulders or spine.⁸

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

⁴ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ *William Edwin Muir*, 27 ECAB 579, 581 (1976); see *Terry E. Mills*, 47 ECAB ____ (Docket No. 94-837, issued January 30, 1996) (listing the members and organs of the body for which the loss or loss of use is compensable under the schedule award provisions).

⁶ *John F. Critz*, 44 ECAB 788, 792-93 (1993) (brain disorder); *Ted W. Dietderich*, 40 ECAB 963, 965 (1989) (gallbladder); *Thomas E. Stubbs*, 40 ECAB 647, 649 (1989) (spleen).

⁷ 5 U.S.C. § 8101(19).

⁸ *Rozella L. Skinner*, 37 ECAB 398, 402 (1986).

In order to meet his burden, appellant must submit sufficient medical evidence to show a permanent impairment causally related to employment that is ratable under the A.M.A., *Guides*. The Office's procedures discuss the type of evidence required to support a schedule award. The evidence must show that the impairment has reached a permanent and fixed state and indicate the date this occurred, describe the impairment in detail, and contain an evaluation of the impairment under the A.M.A., *Guides*.⁹

In the present case, appellant has not submitted sufficient medical evidence to show entitlement to a schedule award, as Dr. McAdam failed to follow the Office's instruction to correlate his impairment rating to the A.M.A., *Guides* and failed to provide sufficient rationale to support his conclusion that appellant had at least a 10 percent permanent impairment of the left lower extremity due to loss of function from sensory deficit, pain or discomfort. Page 130, of the fourth edition of the A.M.A., *Guides* provides a classification scheme and procedure for determining impairment due to pain or sensory deficit resulting from unilateral spinal nerve root impairment affecting the lower extremity. In addition, Table 83, page 130, provides impairment estimates for unilateral sensory or motor loss for the nerve roots most frequently associated with lower extremity impairments, including the first sacral nerve, and the physician is instructed to follow the procedures described in Tables 11 and 12, Section 3.1k, on pages 47 and 48 of the A.M.A., *Guides*. The physician is instructed as follows: Identify the name of the area of involvement. Identify the name of the nerve, part of plexus, or root that innervates the area. Find the value for maximum loss of function of the specific nerve or root due to pain or loss of sensation, using the appropriate table from Chapter 3 as noted. Multiply the percentage associated with the nerve identified above by the percentage associated with the decreased sensation. Determine other nerve impairments by the same procedure and combine the impairments using the Combined Values Chart on page 322.

In his evaluation of appellant's lower extremity, Dr. McAdam indicated that appellant had no motor weakness, but had at least a 10 percent impairment due to loss of function from pain or discomfort. In support of this conclusion, however, the physician simply identified the nerve root as "first sacral" but did not otherwise apply the procedures set forth in the A.M.A., *Guides*. In addition, Dr. McAdam described appellant's pain as "intermittent," "persistent," and "continuing" but did not otherwise evaluate appellant's pain in the manner prescribed by the A.M.A., *Guides*. Accordingly, as Dr. McAdam did not provide the required references to the A.M.A., *Guides*, as requested, and as his narrative reports were not sufficiently rationalized to support his conclusion that appellant had at least a 10 percent permanent impairment of the left lower extremity, the evidence submitted does not establish entitlement to a schedule award under 5 U.S.C. § 8107.

⁹ Federal (FECA) Procedure Manual, Part -- 2, Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (December 1991).

The decisions of the Office of Workers' Compensation Programs dated August 26, June 4, February 28 and January 18, 1996 and October 16, 1995 are hereby affirmed.

Dated, Washington, D.C.
December 1, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member