U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAN C. BOECHLER and DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, McCall, Idaho

Docket No. 96-2358; Submitted on the Record;
Issued September 11, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has greater than a four percent permanent loss of use of each leg.

In the present case, the Office of Workers' Compensation Programs accepted that appellant's employment injuries resulted in a left hip strain and in degenerative disc disease. On October 4, 1994 appellant filed a claim for a schedule award.[1] On November 30, 1994 the Office referred appellant to Dr. Paul J. Fry, a Board-certified orthopedic surgeon, to evaluate the degree of permanent impairment due to his accepted conditions. In his December 14, 1994 report, Dr. Fry noted that, on examination, appellant had full motion of each hip, no loss of lower extremity length, essentially intact and symmetrical sensation, and "no obvious motor deficit in any of the muscle groups of either lower extremity." Dr. Fry concluded:

> "[O]n the basis of his current subjective complaints and objective findings as well as review of his CT [computerized tomography] scan and EMG [electromyogram] studies and laboratory studies, I am really unable to explain to him the reason for the ongoing discomfort in his low back, buttocks, and lower extremities to include the 'tingling' as well as hypalgesia and paresthesias, etc., in the back, and particularly the buttocks and lower extremities.
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> "To specifically describe 'A degree of permanent impairment of the lower extremities due to loss of function from sensory deficit, pain, or discomfort,' this is a purely subjective estimate on the part of the examiner, and from my standpoint I really can't put it over five percent. Further more, to explain the 'degree of permanent impairment of the lower extremity due to loss of function

[1] A schedule award is not payable under the Federal Employees' Compensation Act for an impairment to the back, but a schedule award is payable for a permanent impairment of the legs that is due to an employment-related back condition. *Billy Ray Beasley*, 28 ECAB 74 (1976).

from decreased strength,' this also is purely a subjective measurement, and from my standpoint is not over five percent."

On January 25, 1995 Dr. Leonard A. Simpson, an orthopedic surgeon, reviewed Dr. Fry's report as an Office medical consultant. Dr. Simpson stated:

> "A review of the above records would not identify any specific nerve root involvement. It was noted that the 'Guides to the Evaluation of Permanent Impairment,' Fourth Edition, Chapter 3, Page 130, Table 83, would allow a maximum of five percent of loss of function due to sensory deficit or pain of any one nerve root. Arbitrarily, one would select one of these -- probably the L4 nerve root but it could be also L5 or S1 -- a maximal five percent impairment of each lower extremity. The individual does have subjective complaints that may prevent activities, thus a Grade four or a maximal 80 [percent] grade of this or a four percent impairment of each lower extremity. There was no clinical evidence of loss of strength or atrophy for a zero percent impairment. There was no documented loss of any peripheral joint for a zero percent impairment.
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> "Final award would be a 4 [percent] impairment of the right lower extremity; a four percent impairment of the left lower extremity."

On June 1, 1995 the Office issued appellant a schedule award for a four percent permanent loss of use of each leg. This award was affirmed by an Office hearing representative in a decision dated December 13, 1995, and, in a decision dated June 12, 1996, the Office found that the additional evidence submitted by appellant was not sufficient to warrant review of its prior decisions.

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[4]

The Board finds that appellant has no greater than a four percent permanent loss of use of each leg.

Dr. Simpson correctly applied the tables of the A.M.A., *Guides* to the findings contained in Dr. Fry's December 14, 1994 report to conclude that appellant has a four percent permanent

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.304.

[4] *Quincy E. Malone*, 31 ECAB 846 (1980).

loss of use of each leg due to his employment injuries.[5] Dr. Simpson noted that Table 83 of Chapter 3 of the A.M.A., *Guides* provides for a maximum of five percent loss of function due to sensory deficit or pain for a lumbar nerve root impairment. Dr. Simpson then selected, from Table 11 of Chapter 3, a Grade 4 impairment, described in this table as "Decreased sensibility with or without abnormal sensation or pain, which may prevent activity, and/or minor causalgia." This description is consistent with the description of appellant's sensory deficit contained in the reports of Dr. Fry and of appellant's attending physicians. Dr. Simpson then applied the maximum percentage for sensory deficit for his grade, 80, to the five percent allowed for a lumbar nerve root impairment to conclude appellant had a four percent permanent loss of use of each leg. Although Dr. Fry indicated appellant may have an additional impairment due to loss of strength, his examination did not reveal a loss of strength, and Dr. Steven J. Rizzolo, a Board-certified orthopedic surgeon who was one of appellant's attending physicians, stated in a June 15, 1995 report that appellant's strength was normal.

Reports from appellant's attending physicians do not show a greater impairment. Instead they show a similar sensory deficit in appellant's legs and no loss of strength; they do not show any loss of leg motion. Appellant believes that he has sustained an employment-related loss of wage-earning capacity, but this is another form of compensation under the Act and is not reflected in his schedule award. As the Office has not made a decision on any loss of wage-earning capacity, this is not an issue on appeal.[6]

The decisions of the Office of Workers' Compensation Programs dated June 12, 1996 and December 13, 1995 are affirmed.

Dated, Washington, D.C.
September 11, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[5] *See Michael C. Norman*, 42 ECAB 768 (1991).

[6] *Joe E. Jech, Jr.*, 30 ECAB 1011 (1979).