

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEONARD P. SMITH, JR. and DEPARTMENT OF THE TREASURY,
BUREAU OF THE MINT, Philadelphia, PA

*Docket No. 98-2038; Submitted on the Record;
Issued February 7, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing greater than a 19 percent permanent impairment of his right leg for which he received a schedule award.

On July 8, 1982 appellant, then a 34-year-old melter processor, filed a notice of traumatic injury and claim, alleging that he sustained an injury to his lower left and right back and left knee while on detail to the supply area that day. Appellant stopped work and returned to work on July 12, 1982. The Office of Workers' Compensation Programs initially accepted appellant's claim for contusion of the left knee and later accepted lumbosacral strain, right sciatica strain, precipitation of spinal stenosis at the L3 to S1 levels and herniated nucleus pulposus at the L5 to S1 level. On January 21, 1991 appellant filed a claim for recurrence of disability beginning October 11, 1992 and indicated that he stopped work on December 24, 1992. He returned to work on February 8, 1993.

On January 19, 1993 and December 6, 1994, appellant filed claims for schedule awards. On April 21, 1995 the Office granted appellant a schedule award for a 19 percent permanent impairment of the right leg for the period March 22, 1995 to April 8, 1996 for 54.72 weeks of compensation.

Appellant filed another claim for a schedule award. In a decision dated April 26, 1996, the Office denied appellant's claim for an additional schedule award on the grounds that review of a report by Dr. William Chollak, a Board-certified orthopedic surgeon and appellant's treating physician, did not support his contention that his condition had changed in any way to warrant an additional award. By letter dated May 6, 1996, appellant disagreed with this decision and requested additional physical testing in this regard. In a decision dated October 22, 1996, the Office denied appellant's claim for an additional schedule award on the grounds that the medical evidence did not support any additional permanent impairment to appellant's right leg.¹ By

¹ On May 19, 1997 appellant filed another claim for recurrence of disability in which he indicated that he did not

letter dated September 5, 1997, appellant requested reconsideration. In a merit decision dated November 26, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision.

The Board has carefully reviewed the entire case record on appeal and finds that appellant has not established greater than a 19 percent permanent impairment of his right leg, for which he received a schedule award.²

Section 8107 of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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* (fourth edition 1993) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.⁵

In the present case, the Office determined that appellant had a 19 percent permanent impairment based on reports by Dr. Chollak dated December 27, 1994 and March 22, 1995. In his December 1994 report, Dr. Chollak indicated that appellant had hamstring tightness which caused him to limp at times and back pain without pain below the knees. He diagnosed chronic sciatica which was permanent. In his March 1995 report, Dr. Chollak reported that appellant had reached maximum medical improvement in December 1994 and had a 25 percent permanent impairment due to sensory deficit, pain or discomfort in the L5 and S1 nerve root and a 15 percent permanent impairment due to loss of function and decreased strength. These reports were reviewed by an Office medical adviser who noted that the maximum loss of function due to sensory deficit and pain at the L5-S1 nerve root was five percent under Table 83 of the fourth edition of the A.M.A., *Guides* and the maximum loss of function due to strength deficit at the L5-S1 nerve root was 37 percent. The Office medical adviser found that 100 percent sensory pain loss multiplied by 5 percent equaled 5 percent and appellant's Grade 3 strength/weakness deficit

have any trouble performing his work but had continued discomfort in his right lower back, hip and leg. In an information letter dated July 25, 1997, the Office advised appellant that it construed his claim for a recurrence of disability as a request to reconsider the denial of his claim for an additional schedule award and that he must follow the appeal rights outlined in the Office's October 22, 1996 decision.

² The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on June 5, 1998, the only decision before the Board is the Office's November 27, 1997 decision; see 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.304.

⁵ *Quincy E. Malone*, 31 ECAB 846 (1980).

was 25 to 50 percent of normal which multiplied by 37 percent provided a range within the 15 percent permanent impairment assigned by Dr. Chollak. He then combined the values, *i.e.*, 5 percent sensory deficit and 15 percent strength deficit for a combined permanent impairment of 19 percent.

With his request for an additional schedule award, appellant submitted a new impairment rating by Dr. Chollak in which he indicated that appellant had a 20 percent impairment due to sensory loss and pain and a 10 percent impairment due to motor/strength loss. As the Office awarded appellant's schedule award based on a 100 percent sensory deficit and a 15 percent strength loss and Dr. Chollak previously indicated that appellant had a 25 percent sensory loss and a 15 percent strength loss, the new lower values provided by Dr. Chollak clearly do not provide a basis for an additional schedule award. In response to a request by appellant for further development he was referred to Dr. Amy Colcher, a Board-certified neurologist, for evaluation of his permanent partial impairment. In a report dated September 24, 1996, Dr. Colcher provided a review of the medical evidence of record and physical findings from her examination of appellant. She indicated that the physical findings did not substantiate appellant's subjective complaints, that appellant did not have any motor or sensory impairment of his legs, that his description of pain was of an L4 distribution although there was no discernable sensory loss and that appellant's current symptoms were related to his subsequent accident with a forklift. Dr. Colcher concluded that appellant could return to work as a die inspector without restrictions. This report does not support an additional schedule award for appellant. With his final request for reconsideration, appellant submitted a lumbar spine x-ray, a magnetic resonance imaging (MRI) scan of the lumbar spine and a medical report by Dr. Keri LaVigne, Board-certified physiatrist. She diagnosed status postlumbar laminectomy, moderate enhancing debris impinging on anterior and right anterolateral aspect of the dural sac at the L4 to L5 level most likely representing postsurgical granulation tissue/scar and no definite recurrent disc herniation. The evidence submitted by appellant was reviewed by an Office medical adviser who noted that none of the reports provided an impairment rating consistent with the A.M.A., *Guides*. As appellant did not provide any evidence on reconsideration that was consistent with the A.M.A., *Guides* or from which an impairment rating could be derived, he did not establish any additional schedule award impairment. Therefore, appellant has not established greater than a 19 percent permanent impairment of his right leg.

The decision of the Office of Workers' Compensation Programs dated November 26, 1997 is hereby affirmed.

Dated, Washington, D.C.
February 7, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member