

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DOMINICK F. RANIERI and U.S. POSTAL SERVICE,  
POST OFFICE, Tarrytown, NY

*Docket No. 99-1713; Submitted on the Record;  
Issued October 3, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has greater than a 15 percent permanent loss of use of the right leg and a 9 percent permanent loss of use of the left leg.

The Office of Workers' Compensation Programs accepted that appellant's employment injuries, which occurred on March 7, 1970, December 7, 1976, January 25, 1978 and April 11, 1992 resulted in back sprains, exacerbation of degenerative disc disease, radiculopathy and discogenic disease. On July 27, 1992 appellant filed a claim for a schedule award. The Office initially denied this claim, but later vacated this denial and on November 8, 1993 issued appellant a schedule award for a 15 percent permanent loss of use of the right leg and a 9 percent permanent loss of use of the left leg.

On September 6, 1994 appellant again filed a claim for a schedule award, accompanied by a report dated September 6, 1994 from his attending physician, Dr. Elio J. Ippolito. An Office medical adviser reviewed Dr. Ippolito's September 6, 1994 report on October 12, 1994 and stated that it showed a 12 percent permanent loss of use of each leg. An Office memorandum dated October 1, 1994 indicates no additional schedule award was due to appellant, as he had already received schedule awards for a total of 24 percent of both legs. By decision dated September 16, 1996, the Office found that an additional schedule award was not warranted.

By letter dated November 25, 1996, appellant requested reconsideration of the Office's September 16, 1996 decision. By decision dated June 6, 1997, the Office found that the evidence appellant submitted with his request for reconsideration was not relevant and did not warrant review of its prior decision. By letter dated July 10, 1997, appellant again requested reconsideration of the Office's September 16, 1996 decision. By decision dated July 28, 1997, the Office found that the evidence appellant submitted with his request for reconsideration was cumulative and irrelevant and did not warrant review of its prior decision. By letter dated September 16, 1997, appellant again requested reconsideration of the Office's September 16,

1996 decision. By decision dated October 20, 1997, the Office found that the additional evidence appellant submitted was not sufficient to warrant modification of its prior decision.

By letter dated November 18, 1997, appellant again requested reconsideration of the Office's September 16, 1996 decision. By decision dated February 13, 1998, the Office found that the additional medical report did not warrant modification of the Office's prior decisions, as it did not explain the basis of the impairment stated therein. By letter dated March 19, 1998, appellant again requested reconsideration of the Office's September 16, 1996 decision. By decision dated June 12, 1998, the Office found that the evidence submitted with appellant's request for reconsideration was cumulative and irrelevant and not sufficient to warrant review of its prior decisions. By letter dated July 13, 1998, appellant again requested reconsideration of the Office's September 16, 1996 decision. By decision dated July 27, 1998, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions. By letter dated August 10, 1998, appellant again requested reconsideration of the Office's September 16, 1996 decision. By decision dated September 9, 1998, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions. By letter dated November 2, 1998, appellant again requested reconsideration of the Office's September 16, 1996 decision. By decision dated February 1, 1999, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions, as it did not address a leg impairment. By letter dated April 6, 1999, appellant again requested reconsideration of the Office's September 16, 1996 decision and submitted an additional medical report. By decision dated April 20, 1999, the Office found that entitlement to an additional schedule award was not established.

The Board finds that the case is not in posture for a decision.

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> 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.<sup>3</sup>

In concluding that appellant had a 15 percent permanent loss of use of the right leg and a 9 percent permanent loss of use of the left leg, an Office medical adviser stated that Table 49 of the third edition (revised) of the A.M.A., *Guides* was applied. While this table, titled "Unilateral Spinal Nerve Root Impairment Affecting the Lower Extremity," is the correct table for rating

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> *Quincy E. Malone*, 31 ECAB 846 (1980).

appellant's leg impairments due to his spinal nerve root dysfunction,<sup>4</sup> this table must be used with the grading schemes in Tables 10 and 11.<sup>5</sup> The Office medical adviser's report contains no indication that he used the grading schemes to rate appellant's loss of sensation and loss of strength, even though most of the ratings were less than the maximum allowed by Table 49. When an Office medical adviser on October 12, 1994 assigned 12 percent for each leg based on sciatic nerve dysesthesia reported in a September 6, 1994 report by Dr. Ippolito, this medical adviser did not rate the weakness also reported by Dr. Ippolito in his September 6, 1994 report.

The reports submitted by appellant with his numerous requests for reconsideration -- reports from Dr. Michael I. Weintraub dated November 13, 1996, June 23 and November 4, 1997, March 10, June 17, July 6 and September 29, 1998; from Dr. Ippolito dated November 2, 1998; and from Dr. Peter H. Stern dated February 22, 1999 -- are not particularly helpful in determining what percentage permanent loss of use of the legs appellant has. These reports attempted to rate the permanent impairment of appellant's lumbar spine and do not specifically address the percentage of permanent loss of use of the legs. Schedule awards are not payable under the Act for the back or for the body as a whole, but rather only for the members and functions listed in section 8107 of the Act.<sup>6</sup>

From the evidence in the case record, the Board is unable to ascertain whether appellant has greater than a 15 percent permanent loss of use of the right leg and a 9 percent permanent loss of use of the left leg. The Office should refer appellant, his medical records and a statement of accepted facts, to an appropriate medical specialist for an evaluation consistent with the A.M.A., *Guides* of the permanent loss of use of his legs due to his employment injuries.

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<sup>4</sup> This table corresponds to Table 83 in the fourth edition of the A.M.A., *Guides*, which, according to FECA Bulletin 94-4, issued November 1, 1993, should be used effective November 1, 1993.

<sup>5</sup> Tables 11 and 12 in the fourth edition of the A.M.A., *Guides*.

<sup>6</sup> *Rozella L. Skinner*, 37 ECAB 398 (1986).

The decisions of the Office of Workers' Compensation Programs dated April 20 and February 1, 1999, September 9 and July 27, 1998 are set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC  
October 3, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member