U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NORRIS COOPER, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

Docket No. 01-1590; Submitted on the Record;
Issued February 12, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he has more than a one percent permanent impairment of the lower left extremity, for which he has received a schedule award.

On March 11, 1994 appellant, then a 49-year-old courier, filed a claim for compensation alleging that he was injured when the elevator he was riding dropped suddenly, approximately two floors. Appellant stopped work the same day. The Office of Workers' Compensation Programs accepted the condition of lumbar strain and later expanded the claim to include the condition of recurrent disc herniation of L5-S1. The Office subsequently authorized lumbar decompression surgery along with disc excision, which appellant underwent May 8, 1995. Appellant eventually returned to light duty with permanent restrictions. Appellant's medical history is significant for a previous back surgery.

In an attending physician's form report (CA-20) of April 4, 2000, Dr. Jack L. Miller, Board-certified in physical medicine and rehabilitation and appellant's attending physician, advised that appellant had a 10 percent permanent partial impairment as a result of his work-related injury.

On April 21, 2000 the Office requested that appellant's physician determine the extent of permanent impairment of appellant's left leg in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th edition 1993).

On May 1, 2000 Dr. Miller advised that appellant reached maximum medical improvement on October 31, 1995. He related that the L5 nerve root was affected as a result of the work injury. Utilizing the A.M.A., *Guides* regarding spine injury, Dr. Miller opined that appellant has a 10 percent permanent impairment of the body as a whole.

On August 11, 2000 Dr. Harry L. Collins, Board-certified in orthopedic surgery and an Office medical adviser, reviewed Dr. Miller's May 1, 2000 response in conjunction with

appellant's medical record and stated that Dr. Miller had not established a basis for a 10 percent permanent impairment of appellant's left lower extremity. The Office medical adviser noted that in a May 19, 1999 report, he found no motor deficit and intermittent leg pain. He further noted that, in a January 20, 2000 report, Dr. Miller found no motor deficit and that appellant's left leg pain was occurring intermittently. The Office medical adviser found that the date of maximum improvement was January 20, 2000. Utilizing the A.M.A., *Guides*, the Office medical adviser found that appellant has a Grade 2 pain, which equates to a 1 through 25 percent sensory deficit under Table 11, page 48. Under Table 83, page 130, the Office medical adviser found that the maximum percentage loss of function due to sensory deficit or pain of the S1 nerve root was 5 percent. Utilizing the maximum value of 25 percent from the sensory deficit, the Office medical examiner multiplied that figure by the 5 percent loss of function due to sensory pain which equated to a 1.25 percent impairment value. This figure was rounded down to equate to a one percent permanent impairment of the left lower extremity.

By letter dated August 14, 2000, the Office requested Dr. Miller to review the Office medical adviser's report and to advise whether or not he was in agreement with his recommendations. No response was received.

In a report of August 23, 2000, Dr. Kathleen Gunchick, an orthopedic surgeon, noted that appellant's chronic back pain was getting steadily worse and appellant's left big toe and second toe sometimes suddenly curled up without any warning while walking or in bed. Examination findings revealed normal deep tendon reflexes of the knees and ankles. Negative straight leg raising. Poor hallucis longus strength on the left side. No atrophy of the left leg or foot noted. No fasciculations, good pulses. Poor toe walk on the left side. Normal heel walk. Mild left limp noted as the gait. A diagnosis of chronic lumbosacral pains, left leg pain and weakness post two back surgeries was provided.

In a report dated September 14, 2000, Dr. Lee A. Kelly, a Board-certified orthopedic surgeon, noted the history of injury and appellant's past medical and surgical history. Appellant reported numbness and tingling in his left foot and a feeling of weakness in his left leg. Examination findings revealed standing with a rightward list and an antalgic gait on the left leg when walking. Tenderness in the left lumbosacral area was noted upon palpation. Limited lumbar flexion and extension due to pain was noted, which was approximately 50 percent of normal. Right side bending was unrestricted. Left side bending aggravated the left buttock and thigh pain. Negative straight leg raise on the right side. Distal left leg pain was noted with left straight leg raise. Appellant has normal ability to single heel raise and heel walk bilaterally. Motor functions are a Grade 5/5[1] and sensation is decreased to light touch in the left dorsal foot area. DTRs were absent in both Achilles tendons and 1 to 2 plus in both patellar tendons. Faber exam was negative on the right and left. Hip range of motion was unrestricted in both hips. Dr. Kelley opined that appellant had complaints of left lumbar radiculopathy and he should consider either injections or myelography surgery.

[1] Under Table 12, page 49 of the A.M.A., *Guides*, a Grade 5 classification of muscle function is described as active movement against gravity with full resistance and equates to a zero percent motor deficit.

By decision dated December 14, 2000, the Office granted appellant a schedule award for a one percent permanent disability of his left lower extremity.

The Board finds that appellant has no more than a one percent permanent impairment for loss of use of his left leg, for which he has received a schedule award.

The schedule award provisions 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 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, the Office determined that appellant had a one percent impairment to his left leg by adopting the findings of Dr. Collins, the Office medical adviser, who determined the precise impairment rating by following the proper procedures for determining a lumbar nerve root impairment.[4] The Office medical adviser found that appellant had a Grade 2 pain, which equated to a 25 percent sensory deficit from the lumbar nerve root impairment and no loss of power or motor deficits. Multiplying the 25 percent sensory deficit by the 5 percent impairment rating for the nerve root, Dr. Collins determined that appellant had a 1 percent permanent impairment due to his work injury. The Office requested Dr. Miller to review the findings of Dr. Collins, however, no response was received.

The Board concludes that Dr. Collins, the Office orthopedic consultant, correctly applied the A.M.A., *Guides* in determining that appellant has no more than a one percent permanent impairment for loss of use of the left leg, for which he has received a schedule award from the Office. Although the reports from Drs. Gunchick and Kelly demonstrate that appellant's condition might be worsening, the reports are devoid of any reference to the A.M.A, *Guides* or contain a suggestion with which appellant's present condition can be attributed to the A.M.A, *Guides* to denote a greater entitlement to impairment. Thus, appellant has failed to provide probative, supportable medical evidence that he has greater than the one percent impairment already awarded.

Accordingly, the December 14, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] Although the Office medical adviser stated that the S1 nerve root was impaired and Dr. Miller stated that the impairment involved the L5 nerve root, the Board notes that this discrepancy is moot as the maximum loss of function due to sensory deficit or pain due to either of these nerve roots is 5 percent; *see* A.M.A., *Guides*, Table 83, page 130.

February 12, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member