

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of YEWELL D. WILLIAMS and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, Warner Robins, GA

*Docket No. 03-1433; Submitted on the Record;
Issued September 11, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has greater than a one percent permanent loss of use of the left leg for which he received a schedule award.

The Office of Workers' Compensation Programs accepted that on April 17, 2000 appellant, then a 41-year-old sheet metal mechanic, sustained a lumbar strain and lumbar herniated nucleus pulposus (HNP) while removing panels from an airplane wing. The Office subsequently authorized appellant to undergo lumbar fusion with instrumentation, performed on February 21, 2001.¹ Appellant stopped work following the injury and did not return. He received monthly compensation for total disability.²

On July 12, 2002 appellant filed a Form CA-7 claim for a schedule award. The Office thereafter requested that Dr. Stephen Barnes, a Board-certified orthopedic surgeon and appellant's treating physician, provide information as to whether appellant had any permanent partial impairment to an extremity due to the accepted work-related conditions. Dr. Barnes submitted a functional capacity evaluation report dated April 2, 2002 in response to the Office's request which contained an impairment rating of appellant's lumbar spine and left lower extremity.³

¹ The record reflects that, during the lumbar surgery, appellant's left hand was positioned in such as manner that appellant subsequently experienced numbness and developed left carpal tunnel syndrome. Therefore, the Office accepted left carpal tunnel as compensable in this case and authorized left carpal tunnel release performed on October 11, 2001.

² Appellant underwent a functional capacity evaluation on April 3, 2002 which determined that he was capable of engaging in light to medium work activity. He was referred for vocational rehabilitation services to assist in facilitating a permanent job offer. Appellant was projected to return to modified work in August 2001.

³ In a separate report dated June 11, 2002, Dr. Barnes indicated that appellant had no permanent impairment as a result of his work-related left carpal tunnel syndrome.

In the report, Dr. Barnes stated that appellant alleged pain that radiated to the dorsum of his left foot with certain activities which limited his function. He then stated: “[t]his is calculated by Table 15-18, page 424, the LS nerve root, a 37 percent impairment, and Table 15-18, page 424, item 4, a 25 percent impairment, for a 9 percent left lower extremity impairment....” Dr. Barnes explained that the LS nerve root impairment, which equaled 37 percent was multiplied by the weakness impairment of 25 percent, which he concluded yielded a 9 percent impairment of the left lower extremity.

The Office referred appellant’s case record and Dr. Barnes’ reports to an Office medical adviser to advise whether the claimant was entitled to a schedule award and, if so, what was his date of maximum medical improvement and percentage of loss of use of the extremities, since the case is approved for a back condition and there is no schedule award for the back. The Office medical adviser determined that appellant reached maximum medical improvement on April 2, 2002. He utilized Dr. Barnes’ examination of appellant’s lower extremity to determine impairment; however, the medical adviser indicated that Dr. Barnes’ calculation of impairment of the left leg was incorrect. The Office medical adviser concluded that appellant sustained only a one percent impairment to the left leg.

In a decision dated March 11, 2003, the Office granted appellant a schedule award for a one percent permanent loss of use of the left leg.

The Board finds that the record does not establish that appellant has more than a one percent permanent impairment to his left leg.

Section 8107 of the Federal Employees’ Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁴ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants.⁵

In this case, appellant submitted evidence in support of his schedule award from Dr. Stephen Barnes, a Board-certified orthopedic surgeon, who provided in a functional capacity evaluation report dated April 2, 2002 that he had a nine percent impairment of the left lower extremity. The Office requested that the Office medical adviser advise if the claimant was entitled to a schedule award for loss of use of any extremity in accordance with the A.M.A., *Guides*.

⁴ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁵ A. George Lampo, 45 ECAB 441 (1994).

The Office medical adviser replied in a report dated December 9, 2002 that the medical evidence supported radiculopathy into the leg, with the L5 root affected. The Office medical adviser noted that Dr. Barnes improperly used the total nerve root impairment from Table 15-18 which combines sensory and motor deficits, since appellant's examination only showed an indication for pain.⁶ The Office medical adviser indicated that the physician should have simply used the pain portion of Table 15-18 which indicates that the maximum lower extremity impairment due to pain or sensory deficit of the S1 nerve root is five percent.

The Office medical adviser then evaluated appellant under the criteria set forth in the fifth edition of the A.M.A., *Guides*. The medical adviser noted again that, pursuant to Table 15-18, the maximum lower extremity impairment due to pain or sensory deficit of the S1 nerve root is 5 percent and then graded appellant's pain as 25 percent for pain or decreased sensation according to Table 15-16,⁷ which interfered with activity. The Office medical adviser thereafter multiplied the 25 percent for pain by the 5 percent for maximum impairment of the S1 nerve root sensory function and concluded that appellant had a 1.25 percent permanent impairment of the left leg, which was rounded down to 1 percent. The Board finds that the Office medical adviser properly followed the procedures as set forth in the A.M.A., *Guides* and properly calculated appellant's schedule award.

The Board therefore finds that the weight of the evidence rests with the calculations of the Office medical adviser since Dr. Barnes erroneously applied Table 15-18 combining sensory and motor deficits. Appellant is therefore entitled to a schedule award for no more than a one percent impairment of the left lower leg.

The decision of the Office of Workers' Compensation Programs dated March 11, 2003 is affirmed.

Dated, Washington, DC
September 11, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ A.M.A., *Guides*, Table 15-18, p. 424.

⁷ A.M.A., *Guides*, Table 15-16, p. 424.