

**United States Department of Labor
Employees' Compensation Appeals Board**

CINDY XIAO, Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Glendale, CA, Employer)

**Docket No. 05-230
Issued: April 6, 2005**

Appearances:

*Christina Zhang, for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 1, 2004 appellant filed a timely appeal of a July 8, 2004 decision of the Office of Workers' Compensation Programs issuing a schedule award for a six percent permanent impairment to the left lower extremity. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a six percent permanent impairment to her left lower extremity, for which she received a schedule award on July 8, 2004.

FACTUAL HISTORY

On March 11, 2003 appellant, then a 41-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she injured her lower back while in the performance of duty. In a report dated March 17, 2003, Dr. John Chiu, a neurosurgeon, noted that a magnetic resonance imaging scan showed L4-5 disc protrusions and an electromyogram revealed L5-S1

radiculopathy. The Office accepted the claim for a lumbar disc herniation at L4-5.¹ Appellant submitted a claim for compensation (Form CA-7) on December 6, 2003 indicating that she had used intermittent hours of leave and leave without pay. In a Form CA-7 dated February 5, 2004, appellant indicated that she was claiming a schedule award.

Appellant submitted a report dated December 9, 2003 from Dr. Steve Huang, an occupational medicine specialist. Dr. Huang provided a history of injury and results on physical examination. He diagnosed left L5-S1 radiculopathy and left S1 joint dysfunction. Dr. Huang reported that appellant complained of intermittent slight pain in the low back area with activities such as lifting, bending and stooping increasing her pain to frequent moderate.

In a report dated May 6, 2004, an Office medical adviser reviewed Dr. Huang's report and opined that, with respect to the L5 nerve root appellant had a Grade 3 impairment for pain/sensory deficit of 60 percent of the maximum 5 percent, for a 3 percent impairment. For the S1 nerve root, the medical adviser similarly found a three percent impairment for Grade 3 pain/sensory deficit, for a six percent permanent impairment to the left lower extremity.

By decision dated July 8, 2004, the Office issued a schedule award for a six percent permanent impairment to the left lower extremity. The period of the award was 17.28 weeks commencing December 9, 2003. The compensation rate was three quarters of the weekly pay rate of \$687.87.

LEGAL PRECEDENT

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.² 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.³

ANALYSIS

The medical report providing an opinion as to the degree of permanent impairment under the A.M.A., *Guides* is the Office medical adviser's May 6, 2004 report, reviewing Dr. Huang's December 9, 2003 findings. Dr. Huang reported L5 and S1 radiculopathy, with intermittent mild pain that increased in severity with certain activity. The medical adviser noted that under Table 15-18, the maximum impairment for pain/sensory deficit in the L5 nerve root is five

¹ There is no evidence of record with a diagnosis of L4-5 disc herniation.

² 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).

³ A. George Lampo, 45 ECAB 441 (1994).

percent.⁴ The impairment is graded under Table 15-15, which provides up to 60 percent of the maximum for pain that interferes with some activities.⁵ Therefore, a three percent impairment was determined for the lower extremity based on the L5 nerve root. For the S5 nerve root, Table 15-18 also provides a maximum 5 percent for pain/sensory deficit, which was graded at 60 percent for a 3 percent impairment. The impairments for the L5 and S1 nerve roots are combined for a six percent impairment to the left leg.

The Office medical adviser reviewed the medical evidence of record and provided a reasoned opinion as to the degree of permanent impairment to a scheduled member of the body. There is no probative evidence of a greater impairment. Accordingly, the Board finds that the Office properly issued a schedule award for a six percent permanent impairment. The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the leg, the maximum number of weeks of compensation is 288 weeks. Appellant is entitled to 6 percent of 288 weeks, or 17.28 weeks of compensation, commencing on the date of maximum medical improvement. The medical adviser opined that the date of examination by Dr. Huang, December 9, 2003, was the date of maximum medical improvement.

On appeal, appellant stated that number of hours she was unable to work was calculated incorrectly. Appellant may be referring to her claim for compensation with respect to leave without pay. The record contains an informational letter dated March 11, 2004, regarding compensation payable, but this is not a final decision with appeal rights and it is not before the Board on this appeal. Appellant also referred to the “number of dependents” with regard to her schedule award. The compensation rate is 66 2/3 percent of an employee’s pay rate, which augmented to 75 percent if the employee has a dependent.⁶ The July 8, 2004 decision indicated that appellant received 75 percent of her weekly pay, which is the maximum percentage under the Act. There is no evidence of an adverse decision with respect to the compensation rate in this case.

CONCLUSION

The Board finds that the probative medical evidence of record does not establish more than a six percent permanent impairment to the left lower extremity, for which appellant received a schedule award.

⁴ A.M.A., *Guides* 424, Table 15-18.

⁵ *Id.*, 424, Table 15-15. The Office medical adviser identified Table 16-10, which provides a similar grading scheme, but is used with peripheral nerve injuries as described in Chapter 17, section 17.21.

⁶ *See* 5 U.S.C. §§ 8107 and 8110.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 8, 2004 is affirmed.

Issued: April 6, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member