

January 31, 2001. He stopped work again on June 10, 2003 when he underwent an anterior discectomy and internal interbody fusion at L5-S1. The Office paid appellant compensation until he returned to work on January 22, 2004 with permanent restrictions.

On July 21, 2004 appellant filed a claim for a schedule award. In a letter dated July 22, 2004, his attorney informed the Office that his physician did not perform impairment ratings and requested a referral to Dr. George Rodriguez, a Board-certified physiatrist. By letter dated August 5, 2004, the Office authorized appellant to see Dr. Rodriguez for an impairment rating in accordance with the fifth edition (2001) of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In a report dated September 14, 2004, Dr. Rodriguez discussed the history of injury and noted appellant's lower extremity complaints of stiffness, weakness, intermittent cramping of the hamstrings and calves, numbness from the groin to toes when sitting on a hard surface. He found that his sensation was "intact to light touch" and that strength was normal. Dr. Rodriguez diagnosed an aggravation of lumbar degenerative disc disease, status post fusion of a herniated disc at L5-S1 and bilateral lumbar radiculopathy at L5-S1 based on appellant's symptoms of intermittent cramping. He opined that appellant was "suffering significantly from his low back pain." Dr. Rodriguez found that he reached maximum medical improvement on June 10, 2004. Applying the A.M.A., *Guides*, he determined that appellant had an eight percent impairment of both the right and left lower extremity due to sciatica according to Table 17-37 on page 552 and Table 16-11 on page 484.

An Office medical adviser reviewed Dr. Rodriguez' September 14, 2004 report on December 19, 2004. He noted that Dr. Rodriguez based his impairment rating on sensory and motor loss even though his examination showed normal sensory and motor function. The Office medical adviser determined that the S1 nerve root was the applicable nerve in this case. He found that the maximum sensory impairment of the S1 root according to Table 15-18 on page 424 of the A.M.A., *Guides* was 5 percent, which he multiplied by a graded sensory deficit of 25 percent according to Table 15-15 on page 424, to find a 1.25 percent impairment of the right and left lower extremity. The Office medical adviser then added a 3 percent impairment due to pain according to page 574 of the A.M.A., *Guides* to find a 4.25 percent impairment of both the right and left lower extremities.

The Office medical adviser opined that appellant reached maximum medical improvement on June 10, 2004.

By decision dated January 26, 2005, the Office granted appellant a schedule award for a 4.25 percent impairment to the right leg and a 4.25 percent impairment of the left leg. The period of the award ran for 25.92 weeks from June 10 to December 8, 2004.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² sets 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standards applicable to all claimants.³ The Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁴

Chapter 17 of the A.M.A., *Guides*, relevant to determining a lower extremity impairment, provides:

“It is important to ensure that lower extremity impairment discussed in this chapter is not due to underlying spine pathology. If lower extremity impairment is due to an underlying spine disorder, the lower extremity impairment would, in most cases, be accounted for the spine impairment rating.”⁵

FECA Bulletin No. 01-05, issued January 29, 2001, notes that, with regard to Chapter 18 and impairment ratings based on pain, section 18.3(b) states that “examiners should not use this chapter to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairments systems given in other chapters of the [A.M.A.] *Guides*.”

ANALYSIS

The Office accepted appellant's claim for cervical strain, lumbar sprain and an aggravation of an L5-S1 herniated disc. On June 10, 2003 he underwent an anterior discectomy and fusion at L5-S1. He filed a claim for a schedule award on July 21, 2004. While a schedule award is not payable for the permanent loss of use, of the back or spine, a claimant may be entitled to a schedule award for a permanent impairment to a lower extremity even though the cause of the impairment originates in the spine.⁶

Appellant submitted a report dated September 14, 2004 from Dr. Rodriguez, who listed findings of intact sensation and strength. He discussed appellant's complaints of intermittent cramping, weakness and stiffness of the hamstrings and calves and numbness from the groin to

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ 20 C.F.R. § 10.404(a).

⁴ See FECA Bulletin No. 01-05 (issued January 20, 2001).

⁵ A.M.A., *Guides* at 524.

⁶ See *Vanessa Young*, 55 ECAB ____ (Docket No. 04-562, issued June 22, 2004).

the toes. Dr. Rodriguez identified the nerve involved as the sciatic nerve. He utilized Table 17-37, relevant to sensory and motor nerves loss of peripheral nerves and Table 16-11, which grades the loss of motor power, to determine that appellant had an eight percent impairment of the right and left lower extremities.⁷

An Office medical adviser reviewed Dr. Rodriguez' report and properly found that the applicable nerve involved was S1 as the condition originated in the spine. The Board notes that the A.M.A., *Guides* provides that, if a lower extremity impairment is due to an underlying spine disorder, the lower extremity impairment would, in most cases, be accounted for in the spine impairment rating.⁸ The Office medical adviser applied Table 15-18 of the A.M.A., *Guides*, which is applicable to determining spinal nerve roots impairments affecting the lower extremity and found that the maximum impairment of the S1 nerve root due to sensory deficit or pain was 5 percent. He multiplied the 5 percent impairment of the S1 nerve root by 25 percent, the graded impairment due to sensory loss according to Table 15-15 on page 424, to find that appellant had a 1.25 percent impairment of both the right and left lower extremities. The Office medical adviser then found that he had a 3 percent impairment due to pain according to page 574 in Chapter 18 of the A.M.A., *Guides*, which he added to the 1.25 percent impairment due to sensory loss to find a 4.25 percent impairment of the right and left lower extremities. The Board notes, however, that according to section 18.3(b) of the A.M.A., *Guides*, examiners should not use this chapter to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.⁹ Office procedures provide that Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain.¹⁰ In this case, the Office medical adviser did not explain how the additional three percent impairment awarded appellant due to pain conformed with the above noted protocols.

Accordingly, the Board finds that the medical evidence of record does not provide a probative medical opinion on the nature and extent of appellant's impairment of the lower extremities.¹¹ The case will be remanded to the Office for further development of the medical evidence, as appropriate, to be followed by a *de novo* decision.

CONCLUSION

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

⁷ A.M.A., *Guides*, Tables 17-37, 16-11 at 552, 484.

⁸ *Id.* at 524; *see also Vanessa Young, supra* note 6.

⁹ A.M.A., *Guides*, section 18.3b at 517.

¹⁰ *See* FECA Bulletin No. 01-05 (issued January 31, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

¹¹ *See Philip A. Norulak*, 55 ECAB ____ (Docket No. 04-817, issued September 3, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 26, 2005 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 22, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board