

hemilaminectomy and removal of herniated disc, L4-5, on the left. On November 1, 2001 he had a left L4-5 reexploration and discectomy.

On March 11, 2003 appellant submitted a claim for a schedule award. In a February 11, 2003 report, Dr. John W. Ellis, a Board-certified family practitioner, examined appellant and reviewed the medical record. He concluded that appellant had a herniated lumbar disc requiring lumbar discectomy at L4-5, recurrent disc herniation and scar formation requiring repeat surgery and left L5 and S1 nerve root impingement. Dr. Ellis opined that these injuries arose out of and in the course of his employment. He referenced the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Table 15-18 at 424,¹ to identify the L5 nerve root. Dr. Ellis stated that appellant had a 4 percent impairment due to sensory loss and 20 percent impairment due to pain, or a 23 percent total impairment of the left lower extremity using the Combined Values Chart. Utilizing the same tables, he stated that appellant had a S1 nerve root impairment of 3 percent due to sensory loss and 15 percent due to pain, or an 18 percent total impairment using the Combined Values Chart. Dr. Ellis indicated that he combined the 23 percent L5 nerve root impairment with the 18 percent S1 nerve root impairment to find a 37 percent total impairment of the left lower extremity.

By letter dated May 1, 2003, the Office asked the Office medical adviser to review the medical evidence and rate the percentage of impairment in accordance with the A.M.A., *Guides*. On May 7, 2003 the Office medical adviser noted that Dr. Ellis did not properly apply the A.M.A., *Guides*, Table 15-18. The maximum allowable percentage loss of function for pain and sensory deficit of the L5 and S1 nerve roots is five percent, and that Dr. Ellis' rating exceeded this amount. Dr. Ellis did not determine the grade classification under Table 15-16 to the percentages provided under Table 15-18. The Office medical adviser recommended that the Office refer appellant to a Board-certified specialist to obtain an impairment rating under the A.M.A., *Guides*.

By letter dated June 3, 2003, the Office referred appellant to Dr. Patricia Knott, a Board-certified physiatrist, for a second opinion evaluation. In a medical report dated June 17, 2003, she reviewed appellant's symptoms and provided her findings on physical examination. Utilizing the A.M.A., *Guides*, Table 15-15, page 424, appellant had a Grade 2 sensory loss classification of 70 percent for decreased superficial cutaneous pain and tactile sensibility. Dr. Knott applied this grading to the maximum five percent impairment pursuant to Table 15-18, for sensory loss at the L5 nerve root level, or a total of four percent impairment. She utilized Table 15-16 for motor deficit assessment rating, appellant as a Grade 3, allowing 40 percent for motor deficit with active movement against gravity. Dr. Knott noted that Table 15-18 provides a maximum impairment for motor deficit of L5 of 37 percent. Applying the 40 percent grade to 37 percent impairment for motor deficit of the L5 nerve root, totaled 15 percent impairment. Dr. Knott added the 4 percent sensory loss to the 15 percent motor deficit to find that appellant had a 19 percent left lower extremity impairment.

By letter dated July 25, 2003, the Office asked the Office medical adviser to review Dr. Knott's report and determine appellant's permanent functional impairment of the left lower

¹ Table 15-18 provides unilateral spinal nerve root impairments for the lower extremity.

extremity. In a report dated August 14, 2003, the Office medical adviser indicated that pursuant to Table 15-18, page 424 of the A.M.A., *Guides*, the maximum loss of function due to sensory deficit or pain of the L5 nerve root was 5 percent and the maximum loss of function due to strength deficit was 37 percent. He multiplied the 70 percent Grade 2 sensory deficit allowed by Dr. Knott by the maximum of 5 percent, finding a 4 percent impairment of the left lower extremity based on pain or sensory deficit. The Office medical adviser then considered appellant's motor deficit under Table 15-16 of the A.M.A., *Guides*. He multiplied the 40 percent Grade 3 classification by the maximum 37 percent allowable for loss of strength to find a 15 percent impairment of the left lower extremity due to motor deficit. The Office medical adviser then utilized the Combined Values Chart and determined that 15 percent motor deficit combined with a 4 percent sensory deficit equaled an 18 percent impairment of the left lower extremity.

In an August 26, 2003 decision, the Office granted a schedule award for 18 percent impairment of the left lower extremity.

In a medical report dated January 28, 2004, Dr. Ellis indicated that he reviewed Dr. Knott's report. He noted that Dr. Knott did not find any impairment to the S1 nerve root, and opined:

"As indicated in my report, at the time of appellant's visit of February 11, 2003, he had decreased sensation on the left S1 dermatome of the foot, but not the L5 dermatome. The [electromyogram] report dated August 20, 2000 showed abnormal electrophysiologic studies compatible with a combined L5 and S1 radiculopathy. The changes in the L5 innervated muscles are more prominent than in the S1 innervated muscles.

"The patient with an L4-5 discectomy would normally have nerve pain with the L5 nerve root only. However, the EMG also showed that the S1 nerve root on the left was contributing to [appellant's] left leg radicular pain. At that time of his exam[ination] of February 11, 2003, he had decreased sensation of the S1 dermatome and not the L5 dermatome. The report of Dr. Knott does not take into consideration the positive EMG and the S1 radicular pain of [appellant]."

By decision dated August 18, 2004, the Office denied modification of the August 26, 2003 schedule award.

Appellant filed a timely appeal of the August 18, 2004 decision. However, on May 17, 2005, the Board remanded this case as the record did not contain the complete August 18, 2004 decision.² The Board instructed the Office to issue an appropriate decision to protect appellant's rights.

On remand, the Office issued a new decision on June 10, 2005 denying modification of the August 26, 2003 schedule award.

² Docket No. 05-117 (issued May 17, 2005).

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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 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.⁵

ANALYSIS

The Board finds that the report of the Office medical adviser is the only medical opinion that conforms to the relevant standards of the A.M.A., *Guides*. Dr. Ellis found that appellant had a total L5 nerve root impairment of 23 percent. Dr. Ellis identified Table 15-18 of the A.M.A., *Guides*, stating 4 percent loss due to sensory deficit and 20 percent loss due to pain. He applied the Combined Values Chart to determine that appellant had a 23 percent impairment of the left lower extremity due to L5 nerve root impairment. He identified Table 15-18, indicating that appellant had an 18 percent S1 nerve root impairment of 3 percent due to sensory loss and 15 percent due to pain. He applied the Combined Values Chart to find an 18 percent impairment of the left lower extremity due to S1 nerve root impairment. He then combined the L5 nerve root impairment of 23 percent to the 18 percent S1 nerve root impairment, total a 37 percent impairment of the left lower extremity. However, as properly noted by the Office medical adviser, Dr. Ellis' report does not conform to the A.M.A., *Guides*. Under Table 15-18 the maximum allowable spinal nerve root impairment for pain or sensory loss, for the L5 and S1 nerve roots is five percent. Dr. Ellis allowed a 23 percent impairment for L5 sensory deficit and a 18 percent impairment for S1 sensory deficit. As noted by the Office medical adviser, Dr. Ellis failed to follow the instructions in the A.M.A., *Guides*, which require that he multiply the maximum percentage of loss of the relevant nerve by the grading classification at Table 15-15.

Therefore, the Office referred appellant to Dr. Knott for a second opinion. Dr. Knott determined that appellant had a 19 percent impairment to the left lower extremity. She based this conclusion on the fact that appellant had a Grade 2, 70 percent sensory loss of the L5 nerve root under Table 15-15. As the maximum allowable for sensory loss to the L5 nerve root is 5 percent, Dr. Knott multiplied 5 percent by the 70 percent grade to determine that appellant had a 4 percent impairment based on sensory loss to the L5 nerve root level. As to motor deficit, appellant had a Grade 3 classification pursuant to Table 15-16, for which she allotted 40 percent impairment. The maximum impairment allowed by the A.M.A., *Guides* for loss of the L5 nerve root due to strength deficit is 37 percent. Dr. Knott multiplied the maximum 37 percent by the 40 percent grade to determine that appellant had a 15 percent impairment based on motor deficit

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.404 (2003).

⁵ See *id*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

to the L5 nerve root. Dr. Knott added the sensory and motor deficits together (4 percent plus 15 percent) to find a 19 percent left lower extremity impairment. Although, Dr. Knott properly applied the tables on page 424 of the A.M.A., *Guides*, she added the motor deficit and sensory deficit impairments together whereas she should have combined them utilizing the Combined Values Chart.⁶ When the case was referred to the Office medical adviser, he utilized Dr. Knott's findings but properly used the Combined Values Chart to determine an 18 percent impairment of the left lower extremity due to motor and sensory loss at the L5 nerve root.

As the report of Dr. Ellis did not conform to the A.M.A., *Guides*, it is of diminished probative value. Dr. Knott provided findings and applied the A.M.A., *Guides*. However, she failed to apply the Combined Values Chart and instead added appellant's impairment for sensory loss to the impairment for motor deficit. The Office medical adviser corrected this error by using the Combined Values Chart, as provided by the A.M.A., *Guides*. Pursuant to the Office's procedure manual, the Office medical adviser is charged with the responsibility of calculating the percentage of impairment pursuant to the A.M.A., *Guides*.⁷ As the only physician to properly apply the A.M.A., *Guides*, the Office properly relied upon the medical adviser's to find an 18 percent impairment of the left lower extremity.

In a January 28, 2004 medical report, Dr. Ellis challenged the findings of Dr. Knott, contending that she did not take into consideration any impairment to the S1 root. Dr. Ellis did not provide any new impairment calculations pursuant to the A.M.A., *Guides* or correct the errors in his previous report. Moreover, Dr. Knott made no findings of S1 sensory loss noting instead that appellant exhibited pain symptoms along the L5 dermatome. Dr. Knott considered the matter but did not attribute any impairment to the S1 nerve root.

CONCLUSION

Appellant has not established that he has more than an 18 percent impairment to his left lower extremity.

⁶ A.M.A., *Guides* 423, 604.

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (June 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 10, 2005 is affirmed.

Issued: October 17, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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