



On June 30, 2004 appellant filed a claim for a schedule award and submitted an October 3, 2002 medical report from Dr. John C. Erkkila, a Board-certified orthopedic surgeon, who noted that appellant underwent an intralumbar laminotomy discectomy at the L5-S1 level to the right of midline on May 23, 2000. He stated:

“At this point, [appellant] is stable and stationary, impairment secondary to the herniated nucleus pulposus is the sensory deficit noted on the plantar aspect of the right foot and the absent ankle jerk on the right side. [Appellant] does not have any motor deficits secondary to the herniated nucleus pulposus. The patient does have the aching in the lumbar spine and in the buttocks which in my opinion is secondary to the herniated nucleus pulposus at the L5-S1 level. The thyroid atrophy and the limited mobility on the left [are] not related to the disc surgery. I do not have the rating book available to me, but those are the deficits, and I feel that their rating can be done by the Department of Labor.”

By memorandum dated May 25, 2004, the Office asked an Office medical adviser to review Dr. Erkkila’s report and determine appellant’s permanent impairment of the lower extremity as a result of the accepted back injury. In a report dated May 28, 2004, the Office medical adviser determined that the date of maximum medical improvement was October 30, 2002 and that the total right S1 lower extremity impairment was estimated at one percent. He explained:

**“RIGHT S1 NERVE IMPAIRMENT**

**LEI [lower extremity impairment] Due to Sensory/Pain Deficit -- S1 Nerve**

Grade S1 sensory nerve deficit using Table 15-[15], page 424

I agree with Grade 4 which corresponds to 25 percent LEI

**Maximum LEI percent due to Sensory Deficit S1 Nerve -- Using Table 15-18, page 424**

Maximum Sensory Deficit for S1 nerve equals 5 percent LEI

**Total S1 Sensory Nerve Impairment**

Grade x Maximum percent LEI for S1 Sensory Nerve Deficit

25 percent x 5 percent UEI [upper extremity impairment] = 1.25 percent UEI = 1 percent UEI

**Total Right S1 Lower Extremity Impairment**

Total right S1 sensory nerve lower extremity impairment is 1 percent.”  
(Emphasis in the original.)

By decision dated July 13, 2004, the Office granted a schedule award for a one percent impairment of the right leg.

By letter dated January 25, 2005, appellant requested reconsideration. Appellant did not submit additional evidence, but argued that the schedule award should be increased, noting that he had continuous low level pain in his ankle, that his ankle and foot fall asleep when he walks a long distance and that the award did not consider the continuing pain he experienced in his lumbar spine and buttocks.

By decision dated August 26, 2005, the Office denied modification of its prior decision as appellant failed to provide medical evidence establishing his entitlement to a greater schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>3</sup>

A schedule award cannot be issued for the back. Section 8101(19) of the Act specifically excludes the back from the definition of organ and, therefore, the back does not come under the provisions for payment of a schedule award.<sup>4</sup> The 1960 amendments to the Act modified the schedule award provisions to provide for an award of permanent impairment to a member of the body covered by the schedule, regardless of whether the cause of the impairment originated in a schedule or nonscheduled member. Thus, a claimant may be entitled to a schedule award for permanent impairment to an arm or leg even though the cause of the impairment originated in the neck, shoulders or spine.<sup>5</sup>

### **ANALYSIS**

The Board notes that appellant's treating physician, Dr. Erkkila, declined to rate appellant as he did not have the A.M.A. *Guides* available to him. Since Dr. Erkkila did not provide an impairment rating based upon the A.M.A. *Guides*, the Office properly followed the advice of its medical adviser as he properly applied the A.M.A., *Guides*.<sup>6</sup>

On October 30, 2002 Dr. Erkkila noted that appellant had an impairment secondary to the herniated nucleus pulposus in the sensory deficit on the plantar aspect of the right foot and the absent ankle jerk on the right side but did not have any motor deficits secondary to the herniated nucleus pulposus. The Office referred the case record to an Office medical adviser. The Office

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 20 C.F.R. § 10.404 (2004).

<sup>3</sup> *See id*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

<sup>4</sup> *See* 5 U.S.C. § 8101(19); *Francesco C. Veneziani*, 48 ECAB 572, 574 (1997).

<sup>5</sup> *Thomas J. Englehart*, 50 ECAB 319 (1999).

<sup>6</sup> *See e.g., Laura Heyen*, 57 ECAB \_\_\_\_ (Docket No. 05-1766, issued February 15, 2006); *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

medical adviser applied the A.M.A., *Guides* to Dr. Erkkila's report and determined that appellant had a one percent impairment of the right leg. In reaching this conclusion, the medical adviser determined that appellant had S1 sensory nerve deficit, Grade 4, which corresponded to a 25 percent lower extremity impairment.<sup>7</sup> The Office medical adviser noted that the maximum sensory impairment for the S1 nerve was five percent.<sup>8</sup> Multiplying these two figures (25 percent times 5 percent) equaled a 1.25 percent impairment, which the Office medical adviser rounded down to a 1 percent impairment of appellant's right leg. The Office medical adviser properly applied the A.M.A., *Guides* to the physical findings reported by Dr. Erkkila and determined that appellant had a one percent impairment of his right leg. As there is no other medical evidence establishing that appellant sustained a greater impairment under the schedule, the Office properly found that appellant was entitled to a one percent impairment of his right leg. Consequently, appellant has not established that he is entitled to a schedule award for a greater impairment than that for which he has received.

### **CONCLUSION**

Appellant has not established that he has more than a one percent impairment to his right leg, for which he received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 26, 2005 is affirmed.

Issued: May 1, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>7</sup> A.M.A., *Guides* 424, Table 15-15.

<sup>8</sup> *Id.* at 424, Table 15-18.