

arm to hurt, but by the end of my shift the pain in those areas increased.” The Office accepted his claim for sprain/strain lumbar region.

On October 5, 2006 appellant filed a claim for a schedule award. He submitted a June 29, 2006 evaluation by Dr. John W. Ellis, Board-certified in family and environmental medicine. Dr. Ellis related appellant’s history and complaints and described his findings on examination. He reported that appellant had a 6 percent impairment of his right lower extremity due to a Grade 3 (40 percent) sensory and Grade 4 (10 percent) motor deficit of the L5 spinal nerve root. Dr. Ellis reported that appellant had a 7 percent impairment of the left lower extremity due to a Grade 3 (50 percent) sensory and Grade 4 (10 percent) motor deficit of the L5 spinal nerve root.

On December 2, 2006 an Office medical adviser reviewed Dr. Ellis’ findings and determined that appellant had a seven percent impairment of the right lower extremity due to a Grade 4 sensory and Grade 3 motor deficit of the L5 spinal nerve root. He also determined that appellant had a four percent impairment of the left lower extremity due to a Grade 4 sensory and Grade 4 motor deficit of the L5 spinal nerve root.

On December 15, 2006 the Office issued a schedule award for a seven percent impairment of the right lower extremity and a four percent impairment of the left. This appeal followed.¹

LEGAL PRECEDENT

Section 8107 of the Federal Employees’ Compensation Act² authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.³

ANALYSIS

Impairment due to sensory and motor loss of a spinal nerve root affecting the lower extremity is determined by the grading scheme and procedure set forth on pages 423 and 424 of the A.M.A., *Guides*. Dr. Ellis, the examining family practitioner, identified an impingement of the L5 spinal nerve root. He graded the severity of the sensory loss on the right at 40 percent, placing it within Grade 3, or “Distorted superficial tactile sensibility (diminished light touch and two-point discrimination), with some abnormal sensations or slight pain, that interferes with

¹ On appeal, appellant submits a January 11, 2007 report from Dr. Ellis. The Board has no jurisdiction to review this report. The Board’s jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001).

some activities.”⁴ Multiplying the severity of the loss (40 percent) by the maximum impairment caused by an L5 sensory deficit (5 percent),⁵ Dr. Ellis correctly determined that appellant had a 2 percent impairment of his right lower extremity due to sensory loss.

Dr. Ellis graded the severity of the motor loss on the right at 10 percent, placing it within Grade 4, or “Active movement against gravity with some resistance.”⁶ Multiplying the severity of the loss (10 percent) by the maximum impairment caused by an L5 motor deficit (37 percent), he correctly determined that appellant had a 3.7 percent impairment of his right lower extremity due to motor loss, which rounds to 4 percent.

If there is both sensory and motor impairment of a nerve root, the impairment percents are combined using the Combined Values Chart.⁷ A two percent sensory impairment combines with a four percent motor impairment for a six percent total impairment of the right lower extremity, as Dr. Ellis calculated.

The only thing Dr. Ellis did differently on the left was to grade the sensory deficit at 50 percent. Multiplying this by the maximum impairment caused by an L5 sensory deficit (5 percent),⁸ he found that appellant had a 2.5 percent impairment of his left lower extremity due to sensory loss. This round to three percent or one percent more than on the right. A three percent sensory impairment combines with a four percent motor impairment for a seven percent total impairment of the left lower extremity, again as Dr. Ellis calculated.

The Board finds that Dr. Ellis properly applied the A.M.A., *Guides* to calculate appellant’s impairment. The Office medical adviser appears to have inadvertently reversed the grades reported for sensory and motor deficits on the right. Moreover, he did not explain how he determined the percentage impairments due to motor deficits. The Office medical adviser’s opinion therefore is of diminished probative value.

The Board will modify the December 15, 2006 schedule award to reflect that appellant has a six percent impairment of his right lower extremity and a seven percent impairment of his left. As this entitles appellant to more weeks of compensation, the Board will remand the case for appropriate payment.

CONCLUSION

The Board finds that appellant has less than a seven percent permanent impairment of his right lower extremity and more than a four percent permanent impairment of his left. The

⁴ A.M.A., *Guides* 424 (Table 15-15).

⁵ *Id.* (Table 15-18).

⁶ *Id.* (Table 15-16).

⁷ *Id.* at 423; *see id.* at 604 (Combined Values Chart).

⁸ *Id.* (Table 15-18).

examining physician correctly calculated these impairments as six and seven percent respectively.

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2006 decision of the Office of Workers' Compensation Programs is affirmed as modified. The case is remanded for further action consistent with this opinion.

Issued: August 20, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board