

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

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**W.H., Appellant**

**and**

**GENERAL SERVICES ADMINISTRATION,  
Philadelphia, PA, Employer**

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**Docket No. 07-2104  
Issued: February 1, 2008**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 14, 2007 appellant, through his attorney, filed a timely appeal from September 11, 2006 and February 23, 2007 merit decisions of the Office of Workers' Compensation Programs granting him a schedule award. 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 of the left lower extremity and a three percent permanent impairment of the right lower extremity.

**FACTUAL HISTORY**

This case is before the Board for the second time. In the first appeal, the Board set aside a February 17, 2005 decision granting appellant a schedule award for a three percent impairment

of each lower extremity.<sup>1</sup> It found that the opinion of Dr. Nicholas Diamond, an osteopath, did not conform to the provisions of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*) and thus was of diminished probative value. The Board further determined that Dr. Jatinkumar Ghandi, a Board-certified orthopedic surgeon and Office referral physician, did not explain his finding that appellant experienced radicular pain at L4-5. It remanded the case for further development.

On June 19, 2006 the Office referred appellant to Dr. Ghandi for an additional impairment evaluation. The Office enclosed a February 21, 2006 progress report from Dr. Mark J. Reiner, an osteopath and his attending physician, who discussed appellant's complaints of pain in the lumbar spine. Dr. Reiner listed findings of an antalgic gait without foot drop and pain on straight leg raising.

In a report dated July 24, 2006, Dr. Ghandi reviewed the evidence of record and listed findings on physical examination. He noted that Dr. Reiner did not mention muscle weakness in his February 21, 2006 progress report. Dr. Ghandi indicated that a 2001 EMG revealed bilateral S1 radiculopathy and left L5 dysfunction. He found no evidence of atrophy of the lower extremities and "evidence of patchy sensory disturbance along both lower extremities which did not follow [a] dermatome pattern." Dr. Ghandi noted that appellant experienced pain from the back radiating into the legs from the S1 nerve root and into the dorsum of the left foot which suggested L5 nerve root involvement. He found that, according to Tables 15-15 and 15-18 on page 424 of the A.M.A., *Guides*, appellant had a six percent impairment due to radiculopathy at L5 and S1 on the left side and a three percent impairment due to radiculopathy at S1 on the right side.

An Office medical adviser reviewed Dr. Ghandi's report on August 31, 2006. He applied Table 15-18 on page 424 of the A.M.A., *Guides* and found that the maximum impairment of the S1 and L5 nerve roots due to pain was five percent. The Office medical adviser graded appellant's sensory loss of each nerve root as 60 percent according to Table 15-15 on page 424. He multiplied the 60 percent grade deficit due to pain by the 5 percent maximum impairment of the S1 and L5 nerve root to find a 3 percent impairment of both the S1 and L5 nerve root on the left side.<sup>2</sup> The Office medical adviser combined the three percent impairment of the S1 and L5 nerve roots, which yielded a six percent impairment of the left lower extremity. For the right side, he multiplied the maximum impairment of the S1 nerve root, 5 percent, by a graded 60 percent maximum impairment, to find a 3 percent impairment of the right lower extremity.<sup>3</sup> The Office medical adviser noted that Dr. Ghandi did not find sensory loss following a dermatome on examination but instead based his findings that appellant had an impairment due to radiculitis on the EMG test.

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<sup>1</sup> Docket No. 05-1386 (issued February 8, 2006). The Office accepted that appellant sustained lumbar strain with radiculopathy due to a July 12, 2001 traumatic injury. An October 26, 2001 electromyogram revealed bilateral irritations at S1 and left-sided dysfunction at L5.

<sup>2</sup> A.M.A., *Guides* 424.

<sup>3</sup> *Id.* at 424, Tables 15-15 and 15-18.

By decision dated September 11, 2006, the Office granted appellant a schedule award for an additional three percent impairment of the left lower extremity. The Office noted that he was previously paid for a three percent impairment of each lower extremity. The period of the award ran for 8.64 weeks from April 19 to June 18, 2004.

Appellant requested an oral hearing, which was held on December 11, 2006. At the hearing, his attorney contended that a conflict existed between Dr. Diamond and Dr. Ghandi regarding the extent of permanent impairment. In a decision dated February 23, 2007, the hearing representative affirmed the September 11, 2006 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act,<sup>4</sup> and its implementing federal regulations,<sup>5</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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>6</sup> 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.<sup>7</sup>

Section 15.12 of the fifth edition of the A.M.A., *Guides* describes the method to be used for evaluation of impairment of the upper and lower extremities due to sensory and motor loss from a spinal nerve or spinal cord impairment. The nerves involved are first identified. Then, under Tables 15-15 and 15-16, the extent of any sensory and/or motor loss due to nerve impairment is to be determined, to be followed by determination of maximum impairment due to nerve dysfunction in Table 15-17 for the upper extremity and Table 15-18 for the lower extremity. The severity of the sensory or motor deficit is to be multiplied by the maximum value of the relevant nerve.<sup>8</sup>

### **ANALYSIS**

On the prior appeal, the Board determined that Dr. Ghandi failed to sufficiently explain his determination of the extent of appellant's impairment in accordance with the A.M.A., *Guides*. On remand, the Office referred appellant to him for a second impairment evaluation. In a report dated July 24, 2006, Dr. Ghandi found sensory loss not following a specific dermatome and no atrophy. He discussed appellant's complaints of pain from the back radiating into the legs from the S1 nerve root and into the dorsum of the left foot from an L5 nerve root. Dr. Ghandi noted

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.* at § 10.404(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>8</sup> A.M.A., *Guides* 423; *see also* B.C., 58 ECAB \_\_\_\_ (Docket No. 06-925, issued October 13, 2006).

that a 2001 EMG “showed bilateral S1 radiculopathy with L5 dysfunction.” He determined that, according to Tables 15-15 and 15-18 on page 424 of the A.M.A., *Guides*, appellant had a six percent impairment due to radiculopathy at L5 and S1 on the left side and a three percent impairment due to radiculopathy at S1 on the right side.

An Office medical adviser reviewed Dr. Ghandi’s report and concurred with his findings. He determined that the maximum impairment of the S1 and L5 nerve root due to pain was five percent.<sup>9</sup> The Office medical adviser graded appellant’s pain as 60 percent of the maximum according to Table 15-15 on page 424 of the A.M.A., *Guides*. He multiplied the 5 percent impairment of the S1 and L5 nerve root on the left side by 60 percent, the graded impairment due to sensory loss on Table 15-15 and found a 3 percent impairment of each nerve root, which he combined to find a 6 percent impairment of the left lower extremity.<sup>10</sup> For the right side, the Office medical adviser multiplied the maximum impairment of the S1 nerve root, 5 percent, by a graded 60 percent maximum impairment, to find a 3 percent impairment of the right lower extremity.<sup>11</sup> The findings of Dr. Ghandi and the Office medical adviser are in accordance with the A.M.A., *Guides* and thus represent the weight of the medical evidence and establish that appellant has no more than a six percent permanent impairment of the left lower extremity and a three percent permanent impairment of the right lower extremity.

On appeal, appellant’s attorney contends that a conflict in medical evidence exists between Dr. Diamond and Dr. Ghandi. The Board, however, reviewed Dr. Diamond’s report on prior appeal and found that it was not in accordance with the A.M.A., *Guides*. Consequently, his opinion is insufficient to create a conflict with Dr. Ghandi.

### CONCLUSION

The Board finds that appellant has no more than a six percent permanent impairment of the left lower extremity and a three percent permanent impairment of the right lower extremity.

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<sup>9</sup> *Id.* at 424, Table 15-18.

<sup>10</sup> *Id.* at 424.

<sup>11</sup> *Id.* at 424, Tables 15-15 and 15-18.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 23, 2007 and September 11, 2006 are affirmed.

Issued: February 1, 2008  
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