

physiatrist, who noted that an April 23, 2002 electromyography (EMG) study of the lower extremities demonstrated left L4-5 radiculopathy. Dr. Rodriguez advised that maximum medical improvement was reached on March 8, 2002, provided physical examination findings and diagnosed lumbosacral sprain/strain and neuritis, degenerative disc disease of the lumbar spine, lumbosacral radiculopathy and herniated discs at L1-2, L2-3, L3-4 and L4-5. He advised that in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),¹ appellant had an 18 percent left lower extremity impairment. Dr. Rodriguez identified the sciatic nerve under Figure 17-8 of the A.M.A., *Guides* and found that under Table 17-37 appellant had a 9 percent sensory impairment, 7 percent impairment for dysesthesia and a 42 percent motor impairment. He then advised that under Table 16-10, appellant had a 3 percent sensory deficit and a 3 percent deficit for dysesthesia and that, under Table 16-11, a 12 percent motor deficit, for a total 18 percent left lower extremity impairment.

In a January 5, 2008 report, Dr. Arnold T. Berman, an Office medical adviser and Board-certified orthopedic surgeon, reviewed Dr. Rodriguez's report and disagreed with his conclusion that appellant had an 18 percent left lower extremity impairment. Dr. Berman noted that Dr. Rodriguez inappropriately made calculations for sciatic nerve involvement when, in this case, the sciatic nerve was not involved but rather the L4 and L5 nerve roots, as demonstrated on EMG testing.² Dr. Berman advised that maximum medical improvement was reached on October 2, 2007 and that appellant had no left lower extremity motor deficit. Utilizing the A.M.A., *Guides*, he found that, under Table 15-18, L4 and L5 yielded maximum sensory losses of 5 percent each, and identified a Grade 4 sensory loss under Table 15-15, or 25 percent, which he then multiplied by 5 percent to equal a 1.25 percent L4 impairment and a 1.25 L5 impairment, to total 2.5 percent which he rounded up to yield a 3 percent impairment.

On January 16, 2008 the Office referred appellant to Dr. Kevin F. Hanley, Board-certified in orthopedic surgery, for a second opinion evaluation. Dr. Hanley was asked to provide an impairment rating of appellant's left lower extremity in accordance with the A.M.A., *Guides*.³ In a February 26, 2008 report, he noted the history of injury and appellant's complaints of intermittent numbness and tingling that radiated to the left lower extremity. Dr. Hanley diagnosed annular tear, lumbosacral spine L4-5 with L5 radiculopathy, left and advised that appellant reached maximum medical improvement on August 25, 2006. He reported that appellant had no motor deficit and, under Table 15-18, identified the L5 root as the nerve impaired with a maximum sensory loss of 5 percent. Dr. Hanley then found that appellant had a mid-range Grade 3 deficit under Table 15-15, or 45 percent which, when multiplied by the 5 percent loss found in Table 15-18, yielded a 2.25 percent impairment. He agreed with Dr. Berman that appellant had a three percent left lower extremity impairment. Although, Dr. Rodriguez found 18 percent impairment, he based his conclusion on the fact that appellant

¹ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

² An April 23, 2002 EMG was reported as consistent with early L4-5 radiculopathy. A February 16, 2005 EMG was normal.

³ Dr. Hanley noted that he had previously evaluated appellant on August 25, 2006 and at that time reported that a magnetic resonance imaging (MRI) scan study demonstrated disc bulging and an L4-5 annular tear.

had multilevel radiculopathy which was clearly not the case and not what one would expect as a consequence of a single level annular tear. By report dated March 15, 2008, Dr. Berman advised that the date of maximum medical improvement was October 2, 2007 and noted his agreement with Dr. Hanley's conclusion that appellant had a three percent left lower extremity impairment. On March 19, 2008 appellant was granted a schedule award for a three percent impairment of the left lower extremity, for 8.64 weeks of compensation, to run from October 2 to December 1, 2007.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act⁴ and section 10.404 of the implementing federal regulations,⁵ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*⁶ has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁷

Although, the A.M.A., *Guides* include guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under the Act for injury to the spine.⁸ In 1960, amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.⁹ Impairment should not be considered permanent until the clinical findings indicate that the medical condition is static and well stabilized.¹⁰

Section 15.12 of the fifth edition of the A.M.A., *Guides* describes the method to be used for evaluation of impairment due to sensory and motor loss of the extremities as follows. The nerves involved are to be 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

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ A.M.A., *Guides*, *supra* note 1.

⁷ See *Joseph Lawrence, Jr.*, *supra* note 1; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁸ *Pamela J. Darling*, 49 ECAB 286 (1998).

⁹ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

¹⁰ *Patricia J. Penney-Guzman*, 55 ECAB 757 (2004).

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.¹¹

ANALYSIS

The Board finds that the weight of the medical evidence rests with the opinion of Dr. Hanley, who provided a second opinion evaluation for the Office and concluded that appellant had a three percent impairment of the left lower extremity. While Dr. Rodriguez found that appellant had an 18 percent left lower extremity impairment, he identified the sciatic nerve as causing the impairment and there are no objective findings such as EMG or MRI scan testing to support this conclusion.¹² In his February 26, 2008 report, Dr. Hanley provided examination findings and reported that appellant had no motor deficit of the left lower extremity. He found that, under Table 15-18 of the A.M.A., *Guides*, appellant had a 5 percent L5 sensory impairment. Dr. Hanley then found a 45 percent or Grade 3 sensory loss under Table 15-15 and properly multiplied the two to yield a 2.25 percent left lower extremity impairment, which he rounded up to 3 percent.¹³ Dr. Berman, the Office medical adviser, agreed with Dr. Hanley's findings and advised that maximum medical improvement was reached on October 2, 2007.

CONCLUSION

The Board finds that appellant did not establish that he is entitled to a schedule award for his left lower extremity greater than the three percent awarded.

¹¹ A.M.A., *Guides*, *supra* note 1 at 423.

¹² *Supra* notes 2 and 3.

¹³ A.M.A., *Guides*, *supra* note 1 at 424.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 19, 2008 be affirmed.

Issued: January 7, 2009
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