

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

J.F., Appellant

and

**DEPARTMENT OF AGRICULTURE, FOREST
SERVICE, WEST FORK RANGER STATION,
Darby, MT, Employer**

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**Docket No. 08-1738
Issued: January 12, 2009**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 3, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 1, 2008 decision, which affirmed an October 12, 2007 decision 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 the case.¹

ISSUE

The issue is whether appellant has more than three percent permanent impairment of the right lower extremity, for which he received a schedule award.

¹ The record also contains a December 19, 2007 wage-earning capacity decision. Appellant did not appeal this decision to the Board.

FACTUAL HISTORY

On July 21, 2006 appellant, then a 32-year-old full-time seasonal forestry technician, sustained a back injury while cutting and removing trees. The Office accepted his claim for intervertebral disc disorder with myelopathy of the lumbar region and authorized a L3-4 microdiscectomy and a L4 foraminotomy, which was performed on September 15, 2006. Appellant stopped work on July 22, 2006.

An x-ray of the lumbar spine dated July 27, 2006 revealed no acute bony abnormality. A magnetic resonance imaging (MRI) scan of the lumbar spine dated August 3, 2006 revealed a large extruded disc at L3-4, large disc protrusion at L4-5 with a herniated component and multilevel degenerative disc disease at L3-4, L4-5 and L5-S1. Appellant came under the treatment of Dr. K.C. Brewington, II, a Board-certified neurosurgeon, diagnosed L3-4, L4-5 and L5-S1 degenerative disc disease, L4-5 and L5-S1 subarticular recess stenosis and right L4 radiculopathy with weakness, secondary to right L3-4 herniated nucleus pulposus with inferior migration. Dr. Brewington noted that appellant had progressive paralysis of the right leg associated with the disc herniation and required urgent decompression surgery. He opined that appellant's current lumbar issues were completely and totally related to his occupation as a forester technician. In an operative report dated September 15, 2006, Dr. Brewington performed a right L3-4 microdiscectomy, right L4 foraminotomy and diagnosed right L4 radiculopathy secondary to right L3-4 herniated nucleus pulposus with inferior migration. On October 24, 2006 he noted that appellant was progressing well postoperatively and recommended physical therapy.

On January 23, 2007 appellant submitted a claim for a schedule award. He submitted a report from Dr. Dana Headapohl, Board-certified in occupational medicine, dated January 25, 2007, who noted a history of injury and diagnosed chronic low back pain, multilevel degenerative disc disease, right L4 radiculopathy motor deficits resolved postsurgery with persistent sensory deficits and status post right L3-4 microdiscectomy and right L4 foraminotomy. Appellant noted findings upon physical examination of normal strength of the lower extremities, decreased sensation on the right in the anterolateral thigh (L2), decreased sensation on the right in the anterolateral calf, medial dorsum/plantar foot (L5) and normal reflexes of the biceps, patellar, ankle and plantar. Dr. Headapohl noted work restrictions of no lifting over 40 pounds, avoid static trunkal positions and avoid frequent, repetitive or prolonged trunkal flexion or twisting. He opined that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² (A.M.A., *Guides*) appellant had 12 percent whole person impairment, which related to the lumbar spine.³

On June 18, 2007 the Office requested a supplemental report from Dr. Headapohl and requested that he address whether appellant reached maximum medical improvement and determine whether he sustained any impairment of the extremities due to neurological deficits from affected spinal nerve roots due to the accepted work injury. In a July 18, 2007 report, he noted that appellant reached maximum medical improvement on January 25, 2007.

² A.M.A., *Guides* (5th ed. 2001).

³ *Id.* at 384, Table 15-3.

Dr. Headapohl indicated that appellant sustained an impairment of the right leg at the L3 and L4 nerve root. He calculated, in accordance with the fourth edition of the A.M.A., *Guides*,⁴ that appellant sustained five percent impairment of the lower extremity pursuant to Table 83, page 130. Dr. Headapohl noted that the fifth edition of the A.M.A., *Guides* did not have a correlating table, rather, it calculated nerve root impairment as part of the whole person spine impairment. He noted that the fifth edition of the A.M.A., *Guides* provides reduced extremity impairments for peripheral nerves as compared to the fourth edition. Dr. Headapohl noted that appellant had four percent lower extremity impairment pursuant to Figure 17-8 and Table 17-37, page 552, of the fifth edition of the A.M.A., *Guides*, less than that calculated under the fourth edition.

The Office referred Dr. Headapohl's report to an Office medical adviser who, in an August 28, 2007 report, found that appellant had three percent impairment of the right leg. The medical adviser disagreed with Dr. Headapohl's assertion that the fifth edition of the A.M.A., *Guides* did not provide a method to rate spinal nerve root impairments and opined that he incorrectly utilized the fourth edition of the A.M.A., *Guides* to rate the peripheral nerves. He indicated that the appropriate method to rate the L4 nerve root impairment was pursuant to Table 15-15, 15-16 and 15-18, page 424 of the A.M.A., *Guides* which determines spinal nerve root impairment affecting the lower extremity. The medical adviser calculated that appellant had three percent impairment of the right leg for sensory deficit or pain in the L4 nerve root distribution, for reduced light touch and sharp dull sensation and pain which does not limit his daily activities under Table 15-18 of the A.M.A., *Guides*.⁵ He advised that appellant would be classified as Grade 3, for a 60 percent sensory deficit or pain, in the distribution of the L4 nerve root under Table 15-15.⁶ Impairment of 3 percent for sensory loss would be calculated by multiplying the 60 percent grade with the 5 percent maximum allowed for the L4 nerve. The medical adviser indicated that Dr. Headapohl found appellant's right L4 radiculopathy motor deficits had resolved postsurgery therefore there was no motor loss impairment rating.

In a decision dated October 12, 2007, the Office granted appellant a schedule award for three percent impairment of the right lower extremity. The period of the award was from January 25 to March 26, 2007.

On October 31, 2007 appellant requested an oral hearing which was held on February 14, 2008.

In a decision dated May 1, 2008, the hearing representative affirmed the October 12, 2007 decision.

⁴ *Id.* at (4th ed. 1993).

⁵ *Id.* at 424, Table 15-18.

⁶ *Id.* at 424, Table 15-15.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁷ and its implementing regulation⁸ set 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.⁹

ANALYSIS

On appeal, appellant contends that he has more than three percent permanent impairment of the right lower extremity. The Office accepted appellant's claim for intervertebral disc disorder with myelopathy in the lumbar region and authorized a L3-4 microdiscectomy and a L4 foraminotomy which was performed on September 15, 2006.

Appellant submitted an impairment rating from Dr. Headapohl dated January 25, 2007, who diagnosed chronic low back pain, multilevel degenerative disc disease, right L4 radiculopathy, motor deficits resolved postsurgery with persistent sensory deficits and status post right L3-4 microdiscectomy and right L4 foraminotomy. He noted findings upon physical examination of normal strength of the lower extremities, decreased sensation on the right in the anterolateral thigh (L2), decreased sensation on the right in the anterolateral calf and medial dorsum/plantar foot (L5) and normal reflexes of the biceps, patellar, ankle and plantar. Dr. Headapohl opined that appellant had a 12 percent whole person impairment, which related to the lumbar spine¹⁰ according to the DRE designation for spine impairment. He referenced Table 15-5 of the A.M.A., *Guides*, which pertains to impairment for a lumbar spine injury.¹¹ However, neither the Act nor its regulations provide for the payment of a schedule award for whole body impairment or for impairment of the lumbar spine, rather an appellant may be entitled to a schedule award for permanent impairment to an upper or lower extremity due to an injury of the neck, shoulders or spine.¹²

On June 18, 2007 the Office requested a supplemental report from Dr. Headapohl requesting that he provide an impairment rating for the upper or lower extremities in accordance with the fifth edition of the A.M.A., *Guides*. On July 18, 2007 Dr. Headapohl opined that

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon., granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹⁰ A.M.A., *Guides*, 384, Table 15-3.

¹¹ *Id.* at 392, Table 15-5.

¹² *See Thomas J. Engelhart*, 50 ECAB 319, 320-21 (1999).

appellant sustained a five percent impairment of the lower extremity pursuant to Table 83, page 130 of the fourth edition of the A.M.A., *Guides*. He calculated appellant's impairment pursuant to the fourth edition of the A.M.A., *Guides*¹³ and asserted that the fifth edition of the A.M.A., *Guides* did not have a correlating table and provided a lower extremity impairment for peripheral nerves. However, the Board notes that the fifth edition of the A.M.A., *Guides* was adopted by the Office effective February 1, 2001.¹⁴ Additionally, the fifth edition of the A.M.A., *Guides* provides a method for calculating nerve root and/or spinal cord impairment for the lumbosacral spine which affects the lower extremities, specifically Tables 15-15, 15-16 and 15-18.¹⁵ Therefore, the Board finds that Dr. Headapohl did not properly follow the A.M.A., *Guides*. An attending physician's report is of little probative value where the A.M.A., *Guides*, are not properly followed.¹⁶

The Office medical adviser utilized the findings in Dr. Headapohl's July 18, 2007 report and correlated them to specific provisions in the A.M.A., *Guides* to determine appellant's impairment rating. He opined that appellant had three percent impairment of the right lower extremity. The medical adviser disagreed with Dr. Headapohl's assertion that the fifth edition of the A.M.A., *Guides* did not provide a method to rate spinal nerve root impairments and noted that Dr. Headapohl incorrectly utilized the fourth edition of the A.M.A., *Guides*. He calculated that appellant had three percent impairment of the right lower extremity for sensory deficit or pain in the L4 nerve root distribution. In calculating this amount, the medical adviser classified appellant as Grade 3, for a 60 percent sensory deficit or pain, for decreased light touch and sharp dull sensation and pain which does not limit daily activities under Table 15-15 of the A.M.A., *Guides*.¹⁷ He further indicated that the maximum lower extremity impairment for sensory deficit in the distribution of the L4 nerve root was five percent under Table 15-18.¹⁸ The medical adviser then multiplied the 60 percent grade by the 5 percent maximum allowed for the L4 nerve to arrive at three percent impairment. He indicated that Dr. Headapohl found appellant's right L4 radiculopathy motor deficits had resolved postsurgery therefore there was no motor loss impairment rating. The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* in calculating appellant's permanent impairment.

The Board finds that the medical evidence which conforms to the A.M.A., *Guides* establishes that appellant has no more than a three percent impairment of the right lower extremity. There is no other medical evaluation of record explaining how, pursuant to the fifth edition of the A.M.A., *Guides*, appellant has impairment than that for which the Office has issued a schedule award.

¹³ A.M.A., *Guides* (4th ed. 1993).

¹⁴ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

¹⁵ A.M.A., *Guides*, 424, Table 15-15, 15-16, 15-18.

¹⁶ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

¹⁷ A.M.A., *Guides*, 424, Table 15-15.

¹⁸ *Id.* at 424, Table 15-18.

CONCLUSION

The Board finds that the Office properly determined that appellant had no more than a three percent permanent impairment of the right lower extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2008 and October 12, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 12, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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