

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EDWARD W. SPOHR and DEPARTMENT OF DEFENSE,  
DEFENSE FINANCE & ACCOUNTING SERVICE, Denver, Colo.

*Docket No. 96-691; Submitted on the Record;  
Issued May 1, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has more than a one percent permanent impairment of his left lower extremity and more than a nine percent permanent impairment of his right upper extremity, for which he received a schedule award.

On October 23, 1995 the Office of Workers' Compensation Programs issued a schedule award for a one percent permanent impairment of the left leg and a nine percent permanent impairment of the right arm. The Office based its award on the May 31, 1994 report of Dr. Richard L. Stieg, a Board-certified neurologist. Dr. Stieg disagreed with the procedure set forth in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993), for rating impairment secondary to appellant's centralized reflex sympathetic dystrophy, which the Office accepted as an employment-related injury. He explained that the A.M.A., *Guides* called for the use of sections dealing with impairments to the extremities due to peripheral nerve disorders, but as he pointed out in a paper to be published in the *Journal of Disability*, reflex sympathetic dystrophy is not a disorder of the peripheral nerve but rather of spinal cord function, which is especially true when the condition becomes centralized, as in appellant's case. He proposed an alternative method of evaluating appellant's permanent impairment: Using Tables 13 and 14, page 148, Dr. Stieg determined without explanation that appellant had a one percent permanent impairment of the left lower extremity due to a spinal cord disorder affecting station and gait and a nine percent permanent impairment of the right upper extremity due to a spinal cord disorder affecting one upper extremity. Dr. Stieg noted that if he rated appellant in the manner primarily suggested by the A.M.A., *Guides*, he would have to add up all the sensory impairment pain (largely secondary to appellant's subjective reports), loss of range of motion (largely invalid according to the registered occupational therapist) and loss of motor function. Dr. Stieg stated: "I think we would end up with a very high impairment rating of the extremity which would have been improperly derived because again I do not think we are dealing here with a peripheral nerve disorder."

On June 28, 1994 the Office medical adviser agreed with Dr. Stieg's rationale and recommended ratings and stated he could add nothing further to the interpretation.

The Board finds that this case is not in posture for a determination of whether appellant has more than a one percent permanent impairment of his left lower extremity and more than a nine percent permanent impairment of his right upper extremity. Dr. Stieg failed to follow the procedures set forth in the A.M.A., *Guides* for evaluating permanent impairment secondary to reflex sympathetic dystrophy.

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.304 of the implementing federal regulations<sup>2</sup> authorize the payment of schedule awards for the loss or permanent impairment of specified members, functions or organs of the body. But neither the Act nor the regulations specify how the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as the standard for determining the percentage of impairment, and the Board has concurred in such adoption.<sup>3</sup>

Section 3.21, page 89, of the fourth edition of the A.M.A., *Guides* states that causalgia is a burning pain due to injury of a peripheral nerve, and that reflex sympathetic dystrophy is a disturbance of the sympathetic nervous system characterized by pain, swelling, stiffness, and discoloration, which may follow a sprain, fracture, or nerve or blood vessel injury. "When these conditions occur in the lower extremity," this section provides, "they should be evaluated as for the upper extremity

Section 3.1k, relating to impairment of the upper extremity due to peripheral nerve disorders, does not appear on page 88. It begins on page 46 and ends on page 57. Nonetheless, page 56 provides the procedure for deriving impairment secondary to causalgia and reflex sympathetic dystrophy.<sup>4</sup>

Dr. Stieg chose not to follow the sections expressly setting forth procedures for evaluating impairment secondary to reflex sympathetic dystrophy. Instead, he applied section 4.3, page 147, relating to impairments secondary to spinal cord disorders. This section makes no mention of reflex sympathetic dystrophy. Further, Tables 13 and 14, page 148, provide criteria for estimating the percentage impairment of the whole body. The Act does not authorize the payment of schedule awards for the permanent impairment of "the whole person."<sup>5</sup> Payment is authorized only for the permanent impairment of specified members, organs or functions of the

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> See, e.g., *Leisa D. Vassar*, 40 ECAB 1287 (1989).

<sup>4</sup> Section 3.2k, relating to impairments of the lower extremity due to peripheral nerve injuries, does appear on page 88. This section refers to Table 68, page 89, which provides values for complete motor or sensory loss and dysesthesia for named peripheral nerves of the lower extremity.

<sup>5</sup> *Ernest P. Govednick*, 27 ECAB 77 (1975).

body. Dr. Stieg selected a specific percentage from the range of percentages provided in these tables but offered no rationale for his selection or explanation of how he translated the whole person impairments into impairments of the lower and upper extremity. These deficiencies, however, are overshadowed by the decision Dr. Stieg made not to evaluate appellant in the manner provided by the A.M.A., *Guides*.

Dr. Stieg made clear that he disagrees with the procedure set forth in the fourth edition of the A.M.A., *Guides* because he believes that reflex sympathetic syndrome is not a peripheral nerve disorder. The Board notes, however, that the A.M.A., *Guides* serves as the standard for determining permanent impairment in cases arising under the Act. A physician evaluating the permanent impairment of a claimant must properly follow the procedures and grading schemes set forth therein. Because Dr. Stieg chose not to do so, his conclusions are of diminished probative value for the payment of a schedule award in this case. The Board will set aside the Office's October 23, 1995 decision and remand the case for referral of appellant to another qualified specialist for a proper evaluation of permanent impairment following the procedures set forth in the A.M.A., *Guides*. After such further development as may be necessary, the Office shall issue an appropriate final decision on his entitlement to a schedule award.

The October 23, 1995 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.  
May 1, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member