

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUE A. LOOPER and DEPARTMENT OF AGRICULTURE,
FOOD SAFETY INSPECTION SERVICE,
Dallas, Tex.

*Docket No. 96-1620; Submitted on the Record;
Issued October 22, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she has more than a four percent permanent loss of use of the left lower extremity and a zero percent permanent loss of the right lower extremity.

On August 19, 1991 appellant, then a 42 year-old food inspector, alleged that she injured her back, right leg to knee while in the performance of duty. The Office of Workers' Compensation Programs accepted this claim for lumbar strain.

On March 21, 1994 appellant filed a claim for a schedule award.

On March 22, 1994 the Office terminated appellant's compensation benefits on the grounds that she had returned to regular duty on December 20, 1993 as a food inspector.

On April 13, 1994 the Office requested Dr. Donald W. Malone, appellant's treating physician and an orthopedic surgeon, to submit his opinion regarding any permanent impairment of appellant's lower extremities using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed., 1993).

In his report dated August 22, 1994 Dr. Malone stated that he used the third edition of the A.M.A., *Guides* and found that, based on Table 73 on page 49, number II-E, appellant had a 10 percent impairment of the whole person based on her surgically treated disc lesion; based on IV-B, appellant had a 12 percent impairment for spinal stenosis, spinal instability, single level operated with residual symptoms; based on IV-C, appellant had 1 percent for each level for a total 2 percent, and an additional 1 percent impairment of the whole person in the lumbar area. He also stated that, based on Table 45, page 69, appellant had a 20 percent loss of function, sensation and strength of the lower extremities which translated into 8 percent of the whole person. Dr. Malone added that appellant had a 32 percent total impairment rating by adding 10, 12, 2, and 8 percent.

On September 26, 1994 Dr. Robert S. Meador, an Office medical adviser who is Board-certified in internal medicine, noted that Dr. Malone's 20 percent impairment for each lower extremity was "not probative" because "of lack of explanation," and because the doctor did not use the fourth edition of the A.M.A., *Guides*. He recommended that the Office request additional information from Dr. Malone

concerning a description, location and severity of any pain or sensory disturbance in either leg and of any muscular weakness or atrophy in either leg.

On October 27, 1994 the Office requested Dr. Malone to provide additional information concerning a description of any pain, sensory distribution, muscle weakness or atrophy in either lower extremity.

In a medical report dated November 10, 1994, Dr. Malone stated that appellant had pain in the lumbar area that seemed to radiate into both hips and legs with left worse than right, an altered sensation on the lateral, posterior and medial sides of her left leg, and along the L4-5 and S1 nerve root areas. He also noted that appellant continued to have bilateral leg weakness and left muscle atrophy, and could not get up from a squatting position.

On January 2, 1995 Dr. Meador stated that he had reviewed Dr. Malone's report of November 10, 1994 and determined that, although Dr. Malone stated that appellant had a loss of strength, muscle atrophy, pain and sensory disturbance, the doctor did not provide an adequate description of each condition nor did he provide enough data based on the fourth edition of the A.M.A., *Guides* to calculate appellant's permanent impairment. Dr. Meador recommended that appellant's medical records be referred to another doctor with a familiarity with the requirements of the Office and the A.M.A., *Guides*.

On March 23, 1995 the Office referred appellant's medical records to Dr. William E. Blair, a Board-certified orthopedic surgeon and second opinion consultant, to evaluate whether appellant had an employment-related impairment in accordance with the A.M.A., *Guides* (4th ed., 1993) and, if so, to determine the appropriate percentage of impairment.

In a medical report dated April 5, 1995, Dr. Blair stated that he performed a physical evaluation of appellant using the A.M.A., *Guides* (4th ed., 1993). Dr. Blair noted that appellant had 11 percent whole person impairment based on lumbar disc lesion and multiple levels of disc lesions, a 5 percent impairment due to loss of range of motion, a 10 percent impairment due to residual weakness of the L5 nerve root on the left side which equaled a 4 percent impairment of the left extremity or a 1 percent whole person impairment. Dr. Blair combined appellant's 11 percent impairment for specific disorders, 5 percent impairment for loss of range of motion and 1 percent impairment for neurological deficiencies to reach a final impairment rating of 16 percent. Dr. Blair noted that appellant had reached maximum medical improvement on April 5, 1995.

In a report dated May 8, 1995, Dr. Meador again rendered his evaluation of the medical evidence of record. He stated:

"I have reviewed the medical evidence.

"On January 2, 1995 I reviewed this record in an attempt to derive the PPI [permanent partial impairment] of each lower extremity. Dr. Malone had stated that there was '20 percent impairment of the lower extremities,' and that it was due to loss of strength, muscle atrophy, pain and sensory disturbance. Because he did not explain in detail how he derived the 20 percent figure, and because he referred to the 3rd, rather than the 4th, edition of the A.M.A., *Guides*, his PPI value is not probative for the Office.

"I asked for examination by another physician. Based on the report of Dr. Blair, and the 4th ed. of the A.M.A., *Guides*, the PPI's of the LLE [lower left extremity] and RLE [right lower extremity] are:

LEFT LOWER EXTREMITY

“LOSS OF STRENGTH: L5 nerve root maximum equals 5 percent Grade 4, table 12, page 48 equals 10 percent (Dr. Blair’s figure 10 percent of 37 percent equals 4 percent total PPI of the LLE.)

RIGHT LOWER EXTREMITY

“I find no medical evidence in Dr. Blair’s report that would support a PPI of the RLE.

“DISCUSSION: Dr. Blair did award a whole body PPI of 16 percent. Except for the loss of strength of the LLE, as described above, the remainder of his PPI figure is based on abnormalities of the spine. These are not probative for the Office impairment awards. About the loss of strength in the LLE, his calculation and mine are the same; therefore, there is total agreement between us.”

On May 17, 1995 the Office granted appellant a schedule award for four percent permanent impairment of the left lower extremity. Zero permanent impairment was determined for the right lower extremity.

Appellant requested a written review of the record and by decision dated December 11, 1995, an Office hearing representative affirmed the Office’s May 17, 1995 decision granting appellant a four percent schedule award for the lower left extremity.

The Board finds that appellant has no more than a four percent permanent impairment of the left lower extremity.

With respect to evaluating permanent impairment of the extremities, the schedule award provisions of the Federal Employee’s Compensation Act do not specify the manner in which the percentage loss of a member shall be determined, however, the Board has approved the Office’s use of the A.M.A., *Guides* as the uniform standard applicable to all claimants.¹

Under the A.M.A., *Guides*, evaluation of permanent impairment of the extremities is based primarily on loss of range of motion. All factors which prevent a limb from functioning normally should be considered together with the loss of motion in evaluating the degree of loss for schedule award purposes. Furthermore, in determining the extent of loss of motion, the specific functional impairments such as loss of flexion, extension, etc., should be noted and presented in terms of percentage loss of use of the member in accordance with the appropriate table in the A.M.A., *Guides*.²

In the instant case, Dr. Malone’s medical report did not refer to the appropriate edition of the A.M.A., *Guides* or provide details to show how he arrived at his impairment rating of 20 percent impairment of the lower extremities. His report was therefore not probative and the Office correctly referred appellant for a second opinion evaluation.

Dr. Blair’s medical report reveals a permanent impairment of 16 percent for the whole body. Because the Office may not use whole body impairments, the Office again appropriately referred the medical record to its medical adviser who provided the only evaluation consistent with the A.M.A.,

¹ *Benjamin Swain*, 39 ECAB 448 (1998).

² *James E. Jenkins*, 39 ECAB 860 (1988).

*Guides.*³ The Office medical adviser noted that Dr. Blair's calculations for loss of strength and his own calculations were identical which resulted in a four percent permanent impairment. Dr. Blair's report lacks specific findings which would support an award for the right lower extremity. This being the case, the medical evaluation of Dr. Blair's report is the weight of the evidence and established that appellant has no more than a four percent impairment of the left lower extremity.

The decisions of the Office of Workers' Compensation Programs dated December 11 and May 17, 1995 are hereby affirmed.

Dated, Washington, D.C.
October 22, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Joseph Santaniello*, 42 ECAB 710 (1991).