

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IRA R. HAYES and U.S. POSTAL SERVICE,
POST OFFICE, Gary, Ind.

*Docket No. 97-102; Submitted on the Record;
Issued September 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has more than a 6 percent impairment of the right lower extremity.

Appellant, a letter carrier, sustained an injury in the performance of duty on September 8, 1994 when he tripped and pulled his back. The Office of Workers' Compensation Programs accepted his claim for acute lumbosacral strain and herniated discs at L4-5 and L5-S1 and approved a laminectomy and fusion of L4-S1 on May 2, 1995. On April 26, 1996 appellant filed a claim for a schedule award.

The Board has duly reviewed the record on appeal and finds that the medical evidence fails to establish that appellant has more than a 6 percent permanent impairment of the right lower extremity.

Section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations² 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the standard for determining the percentage of impairment and the Board has concurred in such adoption.³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

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

Appellant's attending physician, Dr. Richard O. Oni, an orthopedic surgeon, specializing in spine surgery, reported on April 12, 1996 that appellant had persistent numbness in the right lower extremity with occasional numbness on the left. He diagnosed intervertebral disk degeneration and herniation of L4-5 and lumbar spinal stenosis at L4-5 with neurogenic claudication. Dr. Oni reported that appellant had reached a stationary point in his condition.

On April 11 and May 1, 1996 Dr. Oni reported that appellant continued to do well as far as pain was concerned but that appellant had persistent complaints of numbness in the right lower extremity with occasional numbness on the left. He stated that this was quite bothersome to appellant and that appellant had appeared to reach a stationary point in his condition. Dr. Oni reported that appellant had a 13 percent permanent impairment of the whole person due to the herniated discs at L4-S1, according to the diagnostic-related estimates model of the 4th edition of the A.M.A., *Guides*.

Dr. Oni's opinion on the extent of appellant's permanent impairment is of diminished probative value in establishing appellant's entitlement to schedule compensation for two related reasons. First, the Act does not authorize the payment of schedule awards for the permanent impairment of "the whole person."⁴ Payment is authorized only for the permanent impairment of specified members, functions or organs of the body. Dr. Oni's rating a 13 percent permanent impairment of the whole person, therefore, provides no basis for the payment of a schedule award under section 8107 of the Act.

Second, no schedule award is payable for a member, function or organ of the body not specified in the Act or in the regulations.⁵ Because neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back,⁶ no claimant is entitled to such an award.⁷ Dr. Oni's use of the diagnosis-related estimate model means that his rating of impairment due to herniated intervertebral discs improperly incorporates whatever impairment to the back these herniations typically cause. The rating of 13 percent is not in conformance with the appropriate standards adopted for the determination of schedule awards.

Nonetheless, 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. As the schedule award provisions of the Act include the extremities, a claimant may be

⁴ *Ernest P. Govednick*, 27 ECAB 77 (1975).

⁵ *William Edwin Muir*, 27 ECAB 579 (1976) (this principle applies equally to body members that are not enumerated in the schedule provision as it read before the 1974 amendment, and to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment); *see also Thomas E. Montgomery*, 28 ECAB 294 (1977).

⁶ The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

⁷ *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).

entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the spine.⁸

The Office properly referred Dr. Oni's reports to an Office medical adviser so that he could compare the clinical findings to the appropriate figures and tables in the A.M.A., *Guides*. The medical adviser identified the nerve roots involved and, using Table 83, page 130, determined that the maximum percentage loss of function due to sensory deficit or pain was 10 percent for these nerve roots. Using the grading scheme provided by Table 20, page 151, the medical adviser determined that Dr. Oni's reports supported that appellant's impairment could be classified as decreased sensation, with or without pain, interfering with activity, which has a sensory impairment range of 26 to 60 percent. Using the maximum percentage allowed with this classification, the medical adviser multiplied the percentage associated with the identified nerve roots by the percentage of decreased sensation and found that appellant had a 6 percent loss of use due to pain or sensory deficit.⁹

The Board finds that the Office properly followed standardized procedures for determining the permanent impairment of appellant's right lower extremity. The Board will, therefore, affirm the Office's June 24, 1996 decision finding a 6 percent permanent impairment of the right lower extremity.¹⁰

The June 24, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
September 23, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁸ *Rozella L. Skinner*, 37 ECAB 398 (1986).

⁹ The Office medical adviser correctly observed that Dr. Oni had reported no findings of weakness.

¹⁰ The Board notes that the issue of any left lower extremity impairment has not been adjudicated by the Office.