

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WANDA MAUZY and U.S. POSTAL SERVICE,
POST OFFICE, Evansville, Ind.

*Docket No. 97-1263; Submitted on the Record;
Issued February 9, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that she has more than an 11 percent permanent loss of use of the left lower extremity.

In the present case, the Office of Workers' Compensation Programs has accepted that on February 1, 1985 appellant sustained a low back injury at work causing permanent aggravation of degenerative disc disease at L4-5, L5-S1, with a ruptured disc at L4 and spondylolisthesis at L4-5. By decision dated July 11, 1994, the Office granted appellant a schedule award for an 11 percent permanent impairment of the left lower extremity. This is the second appeal of this schedule award to the Board. By decision dated December 5, 1996, the Board remanded the case to the Office for clarification of the report from appellant's treating physician, Dr. Ray W. Hester.¹ In remanding the case to the Office the Board noted as follows:

"As noted by the medical adviser, an impairment of the L5 nerve root causing loss of strength can cause up to a 37 percent permanent impairment of the lower extremity, pursuant to Table 83. While the medical adviser used the 20 percent figure proved by Dr. Hester as a grade classification of appellant loss of strength, it appears from Dr. Hester's report that he computed appellant's permanent impairment due to loss of strength to be 20 percent, *i.e.*, the 20 percent figure was not intended as a grade classification of the degree of loss of strength."

On December 31, 1996 the Office wrote to Dr. Hester and requested that he provide a supplemental report addressing the issues raised by the Board and explaining with supporting evidence his finding that appellant had a 24 percent impairment of the left lower extremity. On January 7, 1997 Dr. Hester wrote back he could not understand how the Office had calculated 11 percent out of his finding of 24 percent impairment. He stated that the Office should review his May 10, 1994 report, wherein he had explained his findings and calculations in detail.

¹ Docket No. 95-126 (issued December 5, 1996).

An Office medical adviser reviewed the case record on January 24, 1997. The medical adviser stated that per Dr. Hester's May 10, 1994 examination, appellant still had some weakness of the left foot dorsiflexion, she could walk on her heel, but could not hold it up all the way. He explained that pursuant to Table 21, page 151, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fourth edition, this was a "grade 4" impairment which would be graded between 1 to 25 percent of the maximum impairment for the nerve involved. Per Table 83, page 130, the maximum for the nerve involved the L5 nerve root was 37 percent. Thus 20 percent of 37 percent equaled a 7.4 percent impairment of the left lower extremity. The medical adviser also noted that he agreed with Dr. Hester's finding regarding impairment due to pain and sensory loss.

The medical evidence of record does not substantiate that Dr. Hester determined, as required by the A.M.A., *Guides*, Table 21, appellant's grade impairment. The evidence also does not substantiate that Dr. Hester multiplied the percentage allowable for this grade impairment by the maximum impairment allowable for the nerve root in question, as required by Table 83 of the A.M.A., *Guides*.

As the Office medical adviser properly utilized the A.M.A., *Guides* to evaluate the degree of appellant's impairment, his report provided the only evaluation conforming with the A.M.A., *Guides* and it therefore constitutes the weight of the medical evidence.²

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation that is to be paid for permanent loss of use of the members of the body that are listed in the schedule. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. As a matter of administrative practice the Board has stated: "for consistent results and to insure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables. The Office has adopted and the Board has approved of the A.M.A., *Guides* as the uniform standard applicable to all claimants."³

² *Lena P. Huntley*, 46 ECAB 642 (1995).

³ *Kenneth E. Leone*, 46 ECAB 133 (1994).

The decision of the Office of Workers' Compensation Programs dated February 4, 1997 is hereby affirmed.

Dated, Washington, D.C.
February 9, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member