

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of REGINALD WOODS, JR. and DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTE, Bastrop, Tex.

*Docket No. 97-1050; Submitted on the Record;  
Issued January 22, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant had more than a five percent permanent impairment of the left leg and a one percent permanent impairment of the right leg for which he has received schedule awards.

On March 1, 1993 appellant, then a 45-year-old utilities foreman, was lifting an 80-pound bag of salt for the water softener when he tripped and fell against the side of the water softener. He indicated that he had muscular and ligamentous strain of the neck and back. He stopped working on March 2, 1993 and received continuation of pay for the period March 2 through April 15, 1993. The Office of Workers' Compensation Programs accepted appellant's claim for cervical strain and aggravation of L5 spinal stenosis. The Office paid temporary total disability compensation for the period April 16 through 25, 1993. Appellant returned to light-duty work on April 26, 1993 and lost time from work intermittently thereafter. On December 3, 1993 appellant underwent surgery for L4-5 spinal stenosis with left-sided disc herniation. Dr. Robert A. Probe an orthopedic surgeon, performed a decompressive laminectomy followed by disc excision. The Office paid temporary total disability for the period December 5, 1993 through March 5, 1994 and authorized buy back of leave for 162 hours of leave used in the period May 5 through December 3, 1993.

On July 20, 1994 appellant filed a claim for a schedule award. In a February 28, 1995 decision, the Office issued a schedule award for a five percent permanent impairment of the left leg. Appellant requested a hearing before an Office hearing representative. In a July 18, 1996 decision, the Office hearing representative affirmed the February 28, 1995 left leg schedule award but remanded the case for a determination of whether appellant had a permanent impairment of the right leg. In a September 24, 1996 decision, the Office issued a schedule award for a one percent permanent impairment of the right leg.

The Board finds that, in regard to the schedule award for the left leg, appellant has an eight percent permanent impairment.

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>3</sup>

In a September 13, 1994 report, Dr. Probe stated that appellant had a dysesthesia and subjective weakness of the left leg after the injury to his lumbar spine and left L5 nerve root. He estimated that appellant had a 10 percent permanent impairment. In a November 22, 1994 report, Dr. James H. Albers, a physiatrist, using the A.M.A., *Guides*, concluded that appellant had a 10 percent permanent impairment of the whole man due to lumbar disc surgery, a 4 percent permanent impairment of the whole man due to limitation in lumbar motion, a 1 percent permanent impairment of the leg due to sensory deficit in the L5 nerve root and 4 percent permanent impairment of the leg due to loss of strength involving the L5 nerve root. He concluded that appellant had a 19 percent permanent impairment.

In a February 24, 1995 memorandum, the Office medical adviser indicated that he gave no consideration for appellant's back impairment as it was not a scheduled member under the regulations of the Office. Dr. Albers indicated that appellant had a grade 2 sensory deficit of the L5 nerve which equaled 10 percent.<sup>4</sup> He multiplied the 10 percent by the maximum 5 percent allowed under the A.M.A., *Guides* for total sensory deficit of the L5 nerve and concluded that appellant had a 1 percent permanent impairment of the left leg due to sensory deficit.<sup>5</sup> Dr. Albers stated that appellant had a grade 4 motor deficit of the leg which equaled 10 percent.<sup>6</sup> He multiplied the 10 percent by the 37 percent maximum impairment given for total motor deficit of the L5 nerve and concluded that appellant had a 4 percent permanent impairment of the left leg due to motor deficit.<sup>7</sup>

In an April 16, 1996 report, Dr. Albers indicated that appellant's left leg had normal strength bilaterally except in the extensor hallucis longus, dorsiflexors and invertors on the left.

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<sup>1</sup> 5 U.S.C. § 8107(c).

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

<sup>4</sup> A.M.A., *Guides*, p. 48, Table 11.

<sup>5</sup> *Id.*, p. 130, Table 83.

<sup>6</sup> *Id.*, p. 49, Table 12.

<sup>7</sup> *Id.*, *supra* note 5.

He reported that sensation was intact to light touch and pinprick except for the L5 dermatome on the left and a milder impairment on the right. Dr. Albers related that appellant complained of numbness and tingling sensation into the left root, mostly the dorsal surface, which limited his activities. He noted that appellant also had started to notice some numbness in the same region of his right foot. Dr. Albers calculated that appellant had a 2.5 percent permanent impairment of the left leg due to a grade of 50 percent sensory deficit for decreased sensibility with pain which interfered with activity multiplied by the maximum 5 percent allowed for loss of function due to sensory deficit in the L5 nerve. He further calculated that appellant had a grade of 15 percent for loss of strength which he multiplied by the maximum 37 percent allowed for loss of function due to motor deficit in the L5 nerve which equaled an 5.5 permanent impairment of the leg. Dr. Albers concluded that appellant had an 8 percent permanent impairment of the left leg.

The Office hearing representative found that the report of the Office medical adviser was the weight of the medical evidence. However, the Office procedures provide that the attending physician should make the evaluation whenever possible.<sup>8</sup> The Board has recognized that an attending physician, who has an opportunity to examine appellant, is often in a better position to make certain judgments regarding schedule awards.<sup>9</sup> The report of an Office medical adviser will take precedence over the report of an attending physician if the attending physician gives an estimate of the percentage of impairment without reference to the A.M.A., *Guides* and the medical adviser, based on the findings in a physician's report, provides an estimate of permanent impairment while using the A.M.A., *Guides*.<sup>10</sup> In this case, however, Dr. Albers properly applied the A.M.A., *Guides* in calculating the extent of appellant's permanent impairment, based on his own examination of appellant's sensory and motor deficits of the left leg due to the injury of the L5 nerve. In this circumstance, Dr. Albers' April 16, 1996 report is of more probative weight than the report of the Office medical adviser. The case will be modified to reflect an eight percent permanent impairment of the left leg based on Dr. Albers' April 16, 1996 report.

The Board further finds that the Office properly determined that appellant had a one percent permanent impairment of the right leg.

In his April 16, 1996 report, Dr. Albers stated that appellant a grade of 20 percent sensory deficit in the right leg due to decreased sensitivity without pain. He multiplied the 20 percent by the 5 percent maximum allowed for sensory deficit of the L5 nerve and calculated that appellant had a 1 percent permanent impairment of the right leg due to sensory deficit. Dr. Albers reported that appellant had no strength deficit in the leg. In a September 19, 1996 memorandum, the Office medical adviser concurred with Dr. Albers' calculations and conclusion that appellant had a one percent permanent impairment of the right leg. The medical evidence of record therefore shows that appellant has no more than a one percent permanent impairment of the right leg.

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<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

<sup>9</sup> *Joseph H. Stuart*, 44 ECAB 583 (1993).

<sup>10</sup> *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

The decision of the Office of Workers' Compensation Programs, dated September 24, 1996, is hereby affirmed. The decision of the Office dated July 18, 1996, is hereby affirmed as modified.

Dated, Washington, D.C.  
January 22, 1999

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member