

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT ASHER and DEPARTMENT OF THE ARMY,  
FORT HOOD, TX

*Docket No. 97-2587; Submitted on the Record;  
Issued July 26, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant sustained greater than a five percent permanent impairment of his right lower extremity for which he received a schedule award.

The Board has duly reviewed the case record and concludes that appellant has no greater than a five percent permanent impairment of the right lower extremity.

This case has been before the Board previously. By decision dated December 6, 1996, the Board remanded the case to the Office of Workers' Compensation Programs for further development.<sup>1</sup> On remand, the Office was to obtain a supplementary report from Dr. John A. Schuchmann, a Board-certified physiatrist who had previously evaluated appellant. He was to reevaluate the degree of impairment of appellant's right lower extremity utilizing the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) and indicate a date of maximum medical improvement. The Office was then to issue an appropriate decision. The facts and background of the case contained in the prior decision are incorporated herein by reference.

Following the December 6, 1996 Board decision, the Office referred appellant, along with a statement of accepted facts, a set of questions and the medical record to Dr. Schuchmann. In the interim, appellant requested that Dr. Schuchmann provide a supplementary report, which he did on January 22, 1997. After review of Dr. Schuchmann's report, by an Office medical adviser, by decision dated March 11, 1997, the Office found that appellant has no greater than a five percent permanent impairment of the right lower extremity. The instant appeal follows.

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<sup>1</sup> Docket No. 95-456.

Under section 8107 of the Federal Employees' Compensation Act<sup>2</sup> and section 10.304 of the implementing federal regulations,<sup>3</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>4</sup>

The relevant medical evidence includes a January 22, 1997 report, in which Dr. Schuchmann advised that appellant had abnormality of the S1 nerve root for both motor weakness and sensory deficit, totaling 4 percent and 1.25 percent respectively. He also stated that, according to Table 75,<sup>5</sup> appellant had a 7 percent impairment of the whole person and, under a diagnosis-based estimate, appellant exhibited a Category III lumbosacral impairment which equaled 10 percent of the whole person. He indicated that appellant reached maximum medical improvement on April 9, 1993. In a March 2, 1997 report, an Office medical adviser reviewed Dr. Schuchmann's January 22, 1997 report and, utilizing the fourth edition of the A.M.A., *Guides*, determined that under Table 83<sup>6</sup> appellant exhibited a four percent loss for atrophy and decreased strength and a one percent loss for change in sensation, which equaled a five percent permanent disability for loss of use of the right lower extremity and advised that appellant reached maximum medical improvement on April 9, 1993.

The Board finds that it was proper for the Office medical adviser to use Dr. Schuchmann's findings to rate appellant's permanent impairment. The A.M.A., *Guides* states that the maximum percentages from Table 83 are to be multiplied by a percent from Table 11<sup>7</sup> or Table 12<sup>8</sup> that represents the degree of sensory or motor impairment. In the January 22, 1997 report, Dr. Schuchmann advised that appellant had decreased sensation in the right S1 nerve root distribution which placed him in the 25 percent grade. He also indicated that appellant tended to fatigue with toe raises due to weakness in the right calf and advised that appellant had complete range of motion against gravity and some resistance but not at full strength and concluded that this equaled a 20 percent grade for loss of strength. As found by an Office medical adviser in a March 2, 1997 report, appellant's loss of sensation would be classified as Grade 2. The range of percentages for this grade of sensory deficit is from one to

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.304.

<sup>4</sup> See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

<sup>5</sup> A.M.A., *Guides* at 113.

<sup>6</sup> *Id.* at 130.

<sup>7</sup> *Id.* at 48.

<sup>8</sup> *Id.* at 49.

25. Multiplying 25 percent by the maximum percentage of 5 for a sensory loss due to an impaired S1 nerve root results in a 1.25 percent permanent impairment for sensory loss. The Office medical adviser assigned appellant's motor deficit to Grade 4 of Table 12 of the A.M.A., *Guides*. The range of percentages for this grade of motor deficit is from 1 to 25. Multiplying 25 percent by the maximum percentage of 20 for a strength deficit due to an impaired S1 nerve root results in a 4 percent impairment of the right lower extremity for motor weakness. While Dr. Schuchmann also provided ratings based on spine impairment, no schedule award is payable for injury to the spine under the Act.<sup>9</sup> The Office medical adviser, therefore, properly utilized Dr. Schuchmann's findings regarding motor weakness and sensory deficit to determine that appellant had a five percent permanent impairment of the right lower extremity<sup>10</sup> and the Office properly used these findings in granting appellant a schedule award for a five percent permanent impairment of the right lower extremity

The decision of the Office of Workers' Compensation Programs dated March 11, 1997 is hereby affirmed.

Dated, Washington, D.C.  
July 26, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>9</sup> See *James E. Mills*, 43 ECAB 215 (1991).

<sup>10</sup> The Board notes that subsequent to the March 11, 1997 decision, medical evidence was submitted by appellant's Congressional office. Included in this material was a report in which Dr. Schuchmann outlined his findings and conclusions based on his examination of appellant on March 6, 1997. The Board, however, cannot consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).