

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WALTER L. ROBINSON and FEDERAL EMERGENCY MANAGEMENT  
AGENCY, DISASTER FIELD OFFICE, Bothell, Wash.

*Docket No. 96-1844; Submitted on the Record;  
Issued March 9, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant was entitled to a 100 percent permanent impairment of each leg and a 73 percent impairment of each arm; and (2) whether the Office properly determined that appellant was not entitled to a recurrent pay rate.

The Board has reviewed the case record and concludes that appellant has no more than a 100 percent permanent impairment of each leg and a 73 percent impairment of each arm.

In the present case, the Office accepted that appellant sustained a C6-T1 spinal cord trauma with quadriplegia. On January 20, 1996 the Office granted appellant a schedule award for a 100 percent permanent impairment of each leg and a 73 percent impairment of each arm. Appellant requested reconsideration of this decision on January 17, 1996. By decision dated March 25, 1996, the Office reviewed the merits of the case and found that the evidence submitted in support of the request for reconsideration was not sufficient to warrant modification of the prior decision.

In support of appellant's request for a schedule award, appellant submitted a December 13, 1994 report from Dr. James Robinson, appellant's attending physician and a physician Board-certified in physical medicine and rehabilitation. Dr. Robinson reviewed the history of appellant's injury and treatment. Following a physical examination, he diagnosed quadriplegia and stated that the lowest level of normal function was at C6. He did not discuss the functioning of appellant's penis or testicles. Dr. Robinson also did not perform a pulmonary function study necessary to determine the functioning of appellant's lungs. He concluded that pursuant to Table 73, page 110, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed.) that appellant had an 84 percent impairment of the whole person. Following appellant's request for reconsideration, Dr. Robinson submitted an additional medical report dated January 18, 1996 indicating that, pursuant to Chapter 4 of the A.M.A., *Guides*, appellant had a 94 percent impairment of the whole person. He, however, withdrew his

January 18, 1996 opinion following comments from the Office medical adviser indicating that appellant's impairment rating was already properly calculated.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation,<sup>2</sup> set forth that 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 is to be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides*, as a standard for determining the percentage of impairment.<sup>3</sup>

In obtaining medical evidence for schedule award purposes, the Office must obtain an evaluation by an attending physician which includes a detailed description of the impairment including, where applicable, the loss in degrees of motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment. The description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>4</sup> If the attending physician has provided a detailed description of the impairment, but has not properly evaluated the impairment pursuant to the A.M.A., *Guides*, the Office may request that an Office medical adviser review the case record and determine the degree of appellant's impairment utilizing the description provided by the attending physician and the A.M.A., *Guides*.<sup>5</sup>

Following the receipt of Dr. Robinson's December 13, 1994 report, the Office requested that its medical adviser apply the A.M.A., *Guides* to the measurements of impairment provided by him. The medical adviser evaluated appellant's impairment in a report dated January 10, 1995. The medical adviser noted his diagnosis of quadriplegia with the lowest level of normal functioning at C6 and found that, pursuant to section 3.2k of the A.M.A., *Guides*, page 88 and Table 68, page 89, appellant had a 100 percent permanent impairment of each leg. The medical adviser also found that since appellant's lowest level of normal functioning was at C6, this level resulted in a 38 percent combined motor and sensory deficit of each upper extremity due to C7, a 48 percent combined motor and sensory deficit of each upper extremity due to C8, and a 24 percent combined motor and sensory deficit due to T1 pursuant to Table 13, page 51, of the A.M.A., *Guides*. The medical adviser then utilized the Combined Values Chart at page 322 of the A.M.A., *Guides* to find that the C7, C8 and T1 related impairments resulted in a total of 73 percent impairment of each upper extremity. The Office medical adviser properly noted that because Dr. Robinson failed to describe any impairments of the lungs, testicles or penis, there was no medical evidence on which to find any permanent impairment of these organs. Finally, the medical adviser declined to change his evaluation based on his January 18, 1996

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> *Leisa D. Vassar*, 40 ECAB 1287 (1989).

<sup>4</sup> *Joseph D. Lee*, 42 ECAB 172 (1990).

<sup>5</sup> *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

opinion because Dr. Robinson withdrew this opinion and failed to offer additional detailed descriptions of appellant's impairment.

As the Office medical adviser properly utilized the description of appellant's impairment provided by Dr. Robinson and the A.M.A., *Guides* to evaluate appellant's impairment, and there is no other medical evidence of record that appellant has more than a 100 percent impairment of his legs and a 73 percent impairment of both his upper extremities, the Office properly granted this schedule award.

The Board further finds that the Office properly determined that appellant was not entitled to a recurrent pay rate.

In all situations under the Act, compensation is to be based on the pay rate as determined under section 8101(4) which defines "monthly pay" as:

"The monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater."<sup>6</sup>

Appellant, however, is only entitled to a recurrent pay rate if "the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States."<sup>7</sup> In the instant case, appellant resumed his regular full-time employment on January 23, 1994. Subsequently, appellant required bladder surgery and he stopped working on May 5, 1994. Because appellant failed to return to his regular full-time employment for the six-month period required under the Act, he is not entitled to a recurrent pay rate.<sup>8</sup> The Office, therefore, properly based appellant's schedule award on the pay rate existing on June 10, 1992, the date of injury.

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<sup>6</sup> 5 U.S.C. § 8101(4).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 – Claims, *Computation of Compensation*, Chapter 2.900(4)(a)(c) (September 1990).

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

The decision of the Office of Workers' Compensation Programs dated March 25, 1996 is affirmed.

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

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member