

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA S. HEMBREE and U.S. POSTAL SERVICE,
POST OFFICE, Coppel, TX

*Docket No. 98-5; Submitted on the Record;
Issued February 2, 2000*

DECISION and ORDER

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

The issue is whether appellant is entitled to a schedule award for her left lower extremity.

The Office of Workers' Compensation Programs accepted appellant's claim for strains of the cervical and lumbosacral spine and strain of the left leg due to the November 20, 1995 employment injury. Appellant, who was a letter carrier at time of the November 20, 1995 employment injury, returned to light-duty work on January 23, 1996.

In a report dated March 12, 1997, Dr. Christopher J. Tucker, an osteopath, assigned appellant a seven percent whole person impairment rating pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994). He stated that from Table 75, page 113, he obtained a 5 percent whole person impairment via section 2B for specific disorders of the lumbar spine. Dr. Tucker stated that he measured the lumbar range of motion with dual inclinometers and listed the measurement on a copy of Figure 79, page 134, from the A.M.A., *Guides*. He stated that he used Figures 81 and 82 to convert the lumbar range of motion to a 2 percent whole person impairment. Dr. Tucker stated that he gave no additional impairment for neurologic deficits because there was no consistent sensory or motor loss in the lumbosacral nerve root distribution. He stated that he used the Combined Values Chart, page 324, to combine 7 percent and 2 percent to obtain a total of 7 percent for regional lumbar impairment.

Dr. Tucker stated that, regarding the left lower extremity, there were no specific disorders of the hip which were directly ratable pursuant to the A.M.A., *Guides*. He stated that he used a goniometer to measure the left hip range of motion and obtain flexion of 110 degrees, extension of 25 degrees, adduction of 30 degrees, abduction of 45 degrees, internal rotation of 40 degrees and external rotation of 50 degrees. Dr. Tucker used Table 40, page 78, to convert the left hip range of motion to a 0 percent whole person impairment. He concluded that appellant reached maximum medical improvement on March 12, 1997 and he assigned her a seven percent whole person impairment.

In a report dated April 8, 1997, the district medical adviser reviewed Dr. Tucker's March 12, 1997 report. He noted that Dr. Tucker reported lumbar and cervical spine sprain, left hip pain, persistent low back pain, no evidence of neurological deficits and normal range of motion of the hip. The district medical adviser further noted that Dr. Tucker reported a lumbar spine impairment of 7 percent consisting of 5 percent for specific spinal disorder, 2 percent for limited range of motion and zero percent for left lower extremity pain. Using Table 40, page 78, he used the degrees of motion determined by Dr. Tucker, to determine that appellant had a 0 percent impairment of the left lower extremity.

By decision dated May 1, 1997, the Office denied appellant's claim for a schedule award stating that she had a zero percent impairment to her left lower extremity.

The Board finds that the Office properly determined that appellant is not entitled to a schedule award for her left lower extremity.

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function, or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² For consistent results and to ensure equal justice under the law to 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.³

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.⁴ As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back⁵ or an impairment of the whole person,⁶ no claimant is entitled to such an award.⁷ A claimant, however, may be entitled to a schedule award for permanent impairment to a lower extremity even though the cause of the impairment originated in the spine.⁸

¹ 5 U.S.C. §§ 8107 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Daniel C. Goings*, 37 ECAB 781, 783 (1986).

³ *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

⁴ *George E. Williams*, 44 ECAB 530, 533 (1993); *William Edwin Muir*, 27 ECAB 579, 581 (1976).

⁵ *See* 5 U.S.C. § 8107(c); *George E. Williams*, *supra* note 4.

⁶ *See Gordon G. McNeill*, 43 ECAB 140, 145 (1990); *Rozella L. Skinner*, 37 ECAB 398, 402 (1986).

⁷ *E.g., Timothy J. McGuire*, 34 ECAB 189, 193 (1982).

⁸ *George E. Williams*, *supra* note 4; *Rozella L. Skinner*, *supra* note 6 at 402.

Since the Act does not provide for a schedule impairment of the back or the whole person, Dr. Tucker's calculation that appellant had a 7 percent regional lumbar impairment is not probative. Further, his calculation of appellant's hip measurements are erroneous in that the range of motion measurements Dr. Tucker obtained for the range of appellant's hip motion exceed the measured range on Table 40, page 78, of the A.M.A., *Guides*. Therefore, his use of the A.M.A., *Guides* is improper. Moreover, as the accepted conditions were for a left leg, lumbosacral and cervical strain, any hip range of motion loss has not been established as being related to those conditions and therefore is not work related.

The decision of the Office of Workers' Compensation Programs dated May 1, 1997 is affirmed.

Dated, Washington, D.C.
February 2, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member