

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WAYNE E. KEAN and DEPARTMENT OF THE NAVY,  
NORFOLK NAVAL SHIPYARD, Portsmouth, VA

*Docket No. 98-2054; Submitted on the Record;  
Issued February 28, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has more than a nine percent permanent impairment of his right lower extremity for which he received a schedule award.

On October 2, 1990 appellant, then a 42-year-old electrical engineer, filed a traumatic injury claim alleging that on September 22, 1990 he injured his back in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for a herniated disc at L5-S1 and authorized a laminectomy.

On July 23, 1991 appellant filed a claim for a schedule award. By decision dated April 21, 1993, the Office denied appellant's claim on the grounds that the medical evidence did not establish a permanent loss of use of a scheduled member.

On May 21, 1997 appellant again requested a schedule award. By decision dated August 7, 1997, the Office granted appellant a schedule award for a nine percent permanent impairment of his right lower extremity. The period of the award ran for 25.92 weeks from April 24 to October 22, 1997.

By letter dated September 4, 1997, appellant requested a review of the written record by an Office hearing representative. In a decision dated May 4, 1998 and finalized May 5, 1998, the hearing representative affirmed the Office's August 7, 1997 decision.

The Board has duly reviewed the case record and finds that appellant has no more than a nine percent permanent impairment of his right lower extremity for which he received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act,<sup>1</sup> and section 10.304 of the implementing federal regulations,<sup>2</sup> schedule awards are payable for permanent impairment of

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<sup>1</sup> 5 U.S.C. § 8107.

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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>3</sup>

The Office requested that Dr. D. Lancy Allyn, an orthopedic surgeon and appellant's attending physician, evaluate the extent of any permanent impairment of the lower extremity in accordance with the fourth edition of the A.M.A., *Guides* and provided the appropriate forms for the physician to complete.

In a report dated May 27, 1997, Dr. Allyn found that appellant had reached maximum medical improvement. He stated:

“Subjective complaints as of the date of examination were that of continuous slight intermittent to moderate pain in the low back area with radiation down his right leg extending to the lateral aspect of the right foot and posterior aspect of the right calf. No other significant subjective complaints are made by [appellant].”

Dr. Allyn further noted “hypoesthesia extending down the lateral aspect of the right calf to the area of the small toe on the right side.”

In a report dated June 17, 1997, Dr. Allyn discussed appellant's complaints of pain and hypoesthesia radiating down his right side to the ankle and foot. He found that appellant had a one centimeter decrease in the circumference of his right calf as opposed to his left calf and characterized the range of motion findings for appellant's hips, knees, ankles, feet and toes as normal and symmetrical. Dr. Allyn found motor weakness and decreased sensation “involving the [g]astroc muscle of the right side.” He further noted pain and decreased sensation in the posterior lateral aspect of the thigh, calf, ankle and foot.

On June 30, 1997 an Office medical adviser reviewed Dr. Allyn's reports and properly applied the provisions of the A.M.A., *Guides* to his findings. The Office medical adviser noted the findings of right S1 radiculopathy. He found that the maximum impairment for pain of the S1 nerve root was 5 percent,<sup>4</sup> and that appellant had pain in the affected nerve which he classified as 80 percent in accordance with the grading scheme of the A.M.A., *Guides*.<sup>5</sup> Dr. Allyn multiplied the 80 percent for graded pain with the 5 percent for pain in the nerve root

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<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> *James J. Hjort*, 45 ECAB 595 (1994).

<sup>4</sup> A.M.A., *Guides* 130, Table 83.

<sup>5</sup> *Id.* at 48, Table 11.

to find a 4 percent impairment of the lower extremity. The Office medical adviser graded appellant's loss of muscle strength of the right gastrosoleus muscle/S1 nerve root as 25 percent<sup>6</sup> which he multiplied by the maximum impairment for weakness of the nerve, 20 percent,<sup>7</sup> to find a 5 percent impairment due to weakness. Using the Combined Values Chart, he then combined the impairment findings of four percent for pain and five percent for weakness and concluded that appellant had a nine percent impairment of the right lower extremity.<sup>8</sup>

Accordingly, the Board finds that the weight of the medical evidence, based on the impairment determination of the Office medical adviser, establishes that appellant has no more than a nine percent impairment of the right lower extremity.

The decisions of the Office of Workers' Compensation Programs dated May 4, 1998 and finalized May 5, 1998 and dated August 7, 1997 are hereby affirmed.

Dated, Washington, D.C.  
February 28, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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

<sup>7</sup> *Id.* at 130, Table 83.

<sup>8</sup> *Id.* at 322.