

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAREE J. HALL and DEPARTMENT OF THE INTERIOR,
WEBER BASIN JOB CORPS, Ogden, UT

*Docket No. 98-2036; Submitted on the Record;
Issued March 21, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established entitlement to greater than a three percent permanent impairment of both her right and left legs for which she has received a schedule award.

The Office of Workers' Compensation Programs accepted that on June 10, 1992 appellant, then a 58-year-old intermittent teacher, sustained a low back strain and a herniated disc at L4-5 when she tripped while walking from the office to the classroom due to a two- to three-inch drop between the rooms. Appellant underwent surgery for her herniated disc.

By decision dated January 11, 1995, the Office granted appellant a schedule award for a three percent loss of use of the left leg and a three percent loss of use of the right leg.

In a March 27, 1996 report, Dr. Norman C. Bos, a Board-certified orthopedic surgeon, set forth the results of his physical examination and stated that appellant reached maximum medical improvement on April 5, 1994. He opined that appellant has an L5 nerve root involvement of a Grade 3 impairment. Utilizing Table 11 on page 48 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition),¹ he found that appellant had a sensory deficit impairment value of 2.5 percent for each leg for a total of 5 percent impairment for both legs. A December 19, 1996 letter from Dr. Bos discussed appellant's condition generally and argued for the use of "DRE" (Diagnosis-Related Estimates) or the State of Utah Industrial Codes, which lists herniated discs as a compensation category as opposed to the A.M.A., *Guides*.

In a January 21, 1997 report, an Office medical adviser reviewed the reports of Dr. Bos and agreed that the sensory root pain in each of appellant's legs were 2.5 percent or 3 percent. The date of maximum medical improvement was March 27, 1996. The Office medical adviser stated that only the A.M.A., *Guides* were used under the Federal Employees' Compensation Act.

¹ Hereinafter the A.M.A., *Guides*.

By decision dated January 22, 1997, the Office determined that appellant was not entitled to an additional award over that previously issued for each leg at three percent as the most recent impairment rating was exactly the same as what appellant has been compensated for.

Appellant requested a hearing and submitted new medical evidence. A February 4, 1997 letter from Dr. Bos stated that he did not understand how the A.M.A., *Guides* were used in arriving at the impairment calculations and asked for clarification to gain an understanding. Progress notes, a February 19, 1997 magnetic resonance imaging (MRI) of the lumbar spine, a January 25, 1997 report from Dr. Gail W. Brown, a psychologist, describing the psychological sequelae of appellant's chronic pain resulting from her back injury and subsequent surgery, and an October 14, 1997 report from Dr. David Trimble, a chiropractor, which discussed appellant's back condition was submitted.

In a January 12, 1998 report, Dr. Thomas D. Bauman, a Board-certified orthopedic surgeon, discussed the results of appellant's physical examination and stated that he had sustained a permanent impairment. He stated that appellant's left ankle reflex was 0 compared to 2+ on the right, suggesting concrete evidence of ongoing left ankle nerve damage and radiculopathy. He stated that appellant fits under the DRE category with 10 percent impairment of the whole person related to her back, which means that she has had disc disease and has continued ongoing radiculopathy, with the objective finding being an absence of her left ankle reflex.

By decision dated January 18, 1998 and finalized on February 19, 1998, an Office hearing representative found that the medical evidence did not support that appellant had an additional impairment to either her right or left leg. Specifically, the Office found that the January 12, 1998 report by Dr. Bauman related the back, a condition for which the Office does not grant a schedule award.

The Board finds that appellant is not entitled to greater than a three percent permanent impairment rating for which she has received a schedule award.

Under section 8107 of the Act² and section 10.304 of the implementing regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. As the Act and regulations do not specify procedures to determine percentages of impairment, the Office has adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment, to ensure consistent results and equal justice for all claimants. The Board has concurred in such adoptions.⁴

In this case, the Office had previously awarded appellant a schedule award for a three percent loss of use for both her left leg and right leg. Appellant submitted March 27 and December 19, 1996 reports from Dr. Bos, which the Office medical adviser reviewed and concurred with Dr. Bos that appellant had a sensory deficit impairment value of 2.5 percent or 3 percent in each leg. Inasmuch as there was no additional impairment beyond that already

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

⁴ *Leisa D. Vassar*, 40 ECAB 1287, 1290 (1989); *Francis John Kilcoyne*, 38 ECAB 168, 170 (1986).

awarded, the Office denied appellant an additional schedule award. Of the new evidence submitted, only the January 12, 1988 report of Dr. Bauman contained an impairment rating.

No schedule award is payable for a member, function, or organ of the body not specified in the Act or in the implementing regulations.⁵ In this case, the Office accepted that appellant sustained a low back strain and an L4-5 disc herniation. Thus, the accepted injuries are to the spine or “back.” As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back⁶ which includes the cervical spine and cervical and thoracic musculature, no claimant is entitled to such an award.⁷

A review of Dr. Bauman’s report reveals that the 10 percent impairment rating was based on the whole person related to appellant’s back. Inasmuch as the Act nor the regulations provide for payment of a schedule award for the permanent loss of use of the back, Dr. Bauman’s report is insufficient to support that appellant has an additional impairment rating to either her right or left leg.⁸

⁵ *William Edwin Muir*, 27 ECAB 579 (1976) (this principle applies equally to body members that are not enumerated in the schedule provision as it read before the 1974 amendment and to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment); *see also Ted W. Dietderich*, 40 ECAB 963 (1989); *Thomas E. Stubbs*, 40 ECAB 647 (1989); *Thomas E. Montgomery*, 28 ECAB 294 (1977).

⁶ The Act itself specifically excludes the back from the definition of “organ.” 5 U.S.C. § 8101(19) provides, in pertinent part, that “‘organ’ means a part of the body that performs a special function and for purposes of this subchapter excludes the brain, heart and back....”

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

⁸ *Id.*

The decision of the Office of Workers' Compensation Programs finalized on February 19, 1998 is affirmed.

Dated, Washington, D.C.
March 21, 2000

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member