

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA ADDISON and U.S. POSTAL SERVICE,
POST OFFICE, Catonsville, MD

*Docket No. 98-2097; Submitted on the Record;
Issued May 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a five percent permanent impairment of the left lower extremity for which she received a schedule award.

On September 8, 1994 appellant, then a 38-year-old letter carrier, filed a notice of traumatic injury and claim for compensation alleging that she injured her lower back in the performance of duty on September 7, 1994, while she was lifting trays from the back of a postal truck. The Office of Workers' Compensation Programs initially accepted the claim for a lumbar strain and paid wage-loss compensation. On November 20, 1995 appellant sustained a recurrence of disability. The Office expanded the claim to include a disc herniation at L4-5. Appellant underwent a lumbar laminectomy on December 14, 1995. Appellant was approved for limited duty with restrictions on June 3, 1996.

On May 14, 1997 appellant filed a Form CA-7 claim for a schedule award.

In a report dated July 10, 1997, Dr. Mark S. Rosenthal, a Board-certified orthopedic surgeon and appellant's attending physician, advised that appellant had reached maximum medical improvement from her lower back condition as of May 12, 1997, the date of her last examination. He opined that appellant suffered from epidural fibrosis, which was causing pain, weakness and numbness in the left lower extremity. Dr. Rosenthal concluded that appellant met the criteria of "DRE lumbosacral category III" and that she had a 10 percent whole person impairment according to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In an August 20, 1997 report, Dr. Rosenthal responded to an Office letter requesting a specific impairment rating with respect to appellant's lower extremities. He stated:

"In your letter dated August 11, 1997, you ask for objective findings and my diagnosis concerning the condition affecting the lower extremities. [Appellant] does not have a condition of her lower extremities. She has a spinal pathology causing a radiculopathy. This is a condition related to her lower back.

"If one is to use the [A.M.A., *Guides*], then one must use the [g]uides properly. On page 94, the second paragraph of the second column states the evaluator assessing the spine should use the [i]njury [m]odel, if the patient's condition is one of those listed in Table 70 [p]age 108.

"I believe that [appellant's] condition does fall into the Injury Model and therefore, because I am using the A.M.A., *Guides* both at your request and my preference, I am, by those guides, forced to use the [i]njury [m]odel.

"Utilizing the [i]njury [m]odel, appellant meets the criteria of ... a 10 percent whole person impairment due to the condition of her lumbar spine.... [T]here are no other applicable tables in this situation. The other tables that you mentioned in your letter of August 11, 1997 should only be used if the patient's condition is not listed in Table 70."

By letter dated October 2, 1997, the Office referred appellant for a second opinion evaluation with Dr. Robert F. Draper, Jr., a Board-certified orthopedic surgeon, to determine whether appellant sustained a permanent impairment to the lower extremities based on her work injury and to render an impairment rating under the A.M.A., *Guides*.

In a report dated October 23, 1997, Dr. Draper noted appellant's work and medical histories. He also described the work injury on September 7, 1994. Dr. Draper reviewed the medical record and recorded physical findings including motor and reflex function and range of motion. He opined that appellant suffered from paresthesias (sensation of numbness) in the left foot but not in the right foot. Dr. Draper attributed the condition to appellant's work injury. He further stated that using the A.M.A., *Guides*, Table 83, page 3 to 130, appellant had a L5 radiculopathy with maximum loss of function due to sensory pain rated at five percent impairment for the left and five percent impairment for the right lower extremity. He found no loss of function due to strength deficit in either extremity. Dr. Draper estimated the date of maximum medical improvement to be January 1, 1997.

The Office next forwarded the case for review by the district medical adviser. In a report dated February 4, 1998, the district medical adviser noted that appellant had a left-sided laminectomy with left lower extremity radiculopathy involving the left nerve root for which he rated appellant's impairment as five percent for unilateral spinal nerve root impairment at L5 on the left in accordance with Table 83, page 130 of the A.M.A., *Guides*.

In a decision dated May 11, 1998, the Office issued a schedule award for a five percent permanent impairment to the left lower extremity. The period of the award was from January 1 to April 11, 1997.

The Board finds that the case is not in posture for a decision.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.² Proper use of the A.M.A., *Guides* ensures consistent results and equal justice for all claimants.

In the instant case the Office issued a schedule award for a five percent permanent impairment to the left lower extremity based on the finding of the district medical adviser. The Board finds the Office's determination to be in error as the district medical adviser's report is contingent on the physical findings of Dr. Draper, an examining physician.³ Based on his physical examination, Dr. Draper opined that appellant had a five percent impairment in each of her extremities, not just the left extremity as stated by the district medical adviser. Because the Office did not adequately explain why it was crediting the opinion of the Office medical adviser, who only reviewed the record, over the findings of an Office referral and examining physician, the Board finds that the Office erred in rendering its schedule award determination.⁴

Moreover, the Board notes that neither Dr. Draper nor the district medical adviser followed the directions of the section on lumbar nerve root impairment, which indicates that the value from Table 83 should be multiplied by the percent from Table 11, Chapter 3.1k on classification to determine the percent of impairment.⁵ The section specifically provides that the sensory or motor impairment percent for the impaired nerve root involved is multiplied by a percent from Table 11 that represents the degree of sensory or motor impairment. If both lower

¹ 5 U.S.C. § 8107(a).

² *James Kennedy, Jr.*, 40 ECAB 620 (1989); *Quincy E. Malone*, 31 ECAB 846 (1980).

³ See *Lena P. Huntley*, 46 ECAB 643 (1995) (where appellant's physician did not use the A.M.A., *Guides*, it was proper for an Office medical adviser to apply the A.M.A., *Guides* to the examination findings reported by Dr. Draper).

⁴ Although appellant's treating physician opined that appellant had a 10 percent whole person impairment, schedule awards are not payable for whole person impairment or for nonschedule members of the body such as the back; see *George E. Williams*, 44 ECAB 530 (1993).

⁵ The Board notes that it is permissible to use Table 20, p. 151, instead of Table 11, p. 48, to determine the percentage of impairment, since these two Tables are the same in content, with Table 11 referring to an upper extremity and Table 20 referring to a lower extremity or other impairment.

extremities are impaired, the impairment percent for each is determined and the two percents are combined.⁶

Inasmuch as there is no medical opinion of record that rates appellant's permanent impairment of the lower extremities in proper relation to the A.M.A., *Guides*, the Board remands the case for further development. Thereafter, the Office must issue a *de novo* decision.

The decision of the Office of Worker's Compensation Programs dated May 11, 1998 is hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, D.C.
May 11, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁶ A.M.A., *Guides* at page 3/130.