

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY W. HAUSER and U.S. POSTAL SERVICE,
MANOR STATION, Winston-Salem, NC

*Docket No. 99-461; Submitted on the Record;
Issued May 25, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

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

The Board has duly reviewed the case record and concludes that appellant has no greater than a seven percent permanent impairment of the right lower extremity.

On January 31, 1996 appellant, then a 53-year-old letter carrier, sustained an employment-related lumbar sprain and herniated disc at L5-S1 for which he underwent laminectomy on September 13, 1996. On November 3, 1997 he requested a schedule award. By decision dated February 13, 1998, the Office of Workers' Compensation Programs granted appellant a schedule award for a 7 percent impairment for partial loss of use of the right lower extremity for the period November 3, 1997 to March 24, 1998 for a total of 20.16 weeks of compensation. On March 17, 1998 appellant requested reconsideration and submitted additional medical evidence.¹ In a July 9, 1998 decision, the Office denied modification of its prior decision. In the attached memorandum, the Office found that Dr. Hayes did not properly utilize the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² (hereinafter A.M.A., *Guides*) and based its finding on the opinion of the Office medical adviser. By letter dated September 23, 1998, appellant again requested reconsideration and submitted additional evidence. In a November 3, 1998 decision, the Office again denied modification of its prior decision, noting that the Federal Employees' Compensation Act³ does not allow a schedule award for impairments to the spine. The instant appeal follows.

¹ The record indicates that on September 23, 1998 appellant also requested a hearing. The record does not contain a final decision on this issue and it is, therefore, not before the Board. 20 C.F.R. § 501.2(c).

² American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).

³ 5 U.S.C. §§ 8101-8193.

Under section 8107 of the Act⁴ and section 10.304 of the implementing federal regulations,⁵ 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 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 A.M.A., *Guides* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁶

The relevant medical evidence includes a September 30, 1997 report from Dr. John T. Hayes, appellant's treating Board-certified orthopedic surgeon, who advised that, under Table 68 of the A.M.A., *Guides*, regarding the sciatic nerve, appellant had a seven percent impairment for sensory loss and a five percent impairment for dysesthesia. In a February 6, 1998 report, an Office medical adviser evaluated his findings and advised that, under the A.M.A., *Guides*, the findings under Table 68⁷ had to be multiplied by the percentage of impairment found in Table 20.⁸ He then found that appellant had a class 2 impairment under Table 20 and granted him the maximum allowable, 25 percent. The Office medical adviser then multiplied the 25 percent by Dr. Hayes' findings under Table 68 of a 17 percent impairment for sensory deficit and 12 percent impairment for dysesthesia, to equal 4 percent and 3 percent respectively which he added to equal a 7 percent impairment of the right lower extremity.

With his request for reconsideration dated March 17, 1998, appellant submitted a report dated March 13, 1998 in which Dr. Hayes explained that appellant's sensory loss of 7 percent should be added to his loss of 5 percent for dysesthesia, to equal a total impairment of 12 percent. With his reconsideration request dated September 23, 1998, appellant submitted a September 11, 1998 report in which Dr. Hayes advised that under Table 75 of the A.M.A., *Guides*, appellant would be entitled to an eight percent impairment for a surgically treated disc lesion. In an October 29, 1998 report, an Office medical adviser reviewed Dr. Hayes' September 11, 1998 report and advised that appellant was not entitled to a schedule award for a back impairment.

The Board finds that the Office medical adviser properly rated appellant's permanent impairment. Neither the Act nor its implementing regulation provides for a schedule award for impairment to the back or to the body as a whole.⁹ A schedule award is, however, payable for a

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.304.

⁶ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁷ A.M.A., *Guides*, *supra* note 2 at 89.

⁸ *Id.* at 151.

⁹ See *Terry E. Mills*, 47 ECAB 309 (1996).

permanent impairment of the legs that is due to an employment-related back condition.¹⁰ In this case, while Dr. Hayes provided reports indicating that appellant had a 12 percent impairment of the lower extremity, his findings are not supported by the instructions provided by the A.M.A., *Guides* and, therefore, would not indicate that appellant was entitled to a greater award. The language found in section 3.2k of the A.M.A., *Guides*¹¹ indicates that this table is to be used for complete motor or sensory loss for the named peripheral nerves. Dr. Hayes advised that appellant had “some” numbness and residual dysesthesia of his right foot and ankle. The Office medical adviser, therefore, properly utilized section 4.4c of the A.M.A., *Guides*¹² and determined that appellant had a class 2 impairment under Table 20 and granted him the maximum allowable, 25 percent. He then multiplied the 25 percent by Dr. Hayes’ findings under Table 68 of a 17 percent impairment for sensory deficit and 12 percent impairment for dysesthesia, to equal 4 percent and 3 percent respectively, which he added to equal a 7 percent impairment of the right lower extremity. The Office therefore properly granted appellant a schedule award for a seven percent permanent impairment of the right lower extremity.¹³

The decisions of the Office of Workers’ Compensation Programs dated November 3, July 9 and February 13, 1998 are hereby affirmed.

Dated, Washington, D.C.
May 25, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

¹⁰ See *Denise D. Cason*, 48 ECAB 530 (1997).

¹¹ A.M.A., *Guides*, *supra* note 2 at 89.

¹² *Id.* at 151.

¹³ See *Luis Chapa, Jr.*, 41 ECAB 159 (1989).