

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CELENIA C. LOPEZ and U.S. POSTAL SERVICE,  
POST OFFICE, Capitol Heights, MD

*Docket No. 00-1921; Submitted on the Record;  
Issued August 9, 2001*

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DECISION and ORDER

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

The issue is whether appellant has established that she is entitled to a schedule award, causally related to her accepted lumbosacral strain and right sciatica conditions.<sup>1</sup>

This is appellant's second appeal before the Board. In the prior appeal where appellant was seeking to establish a recurrence of disability causally related to her November 9, 1992 lumbosacral strain and right sciatica injuries, by decision dated June 17, 1997, the Board remanded the case for further development finding that there was an unresolved conflict in the medical evidence.<sup>2</sup> The facts and circumstances are completely laid out in the prior Board decision and are hereby incorporated by reference.

Upon remand the Office of Workers' Compensation Programs composed a statement of accepted facts and questions to be addressed and it referred appellant together with the relevant case record to Dr. James R. Kunec, a Board-certified orthopedic surgeon, for resolution of the conflict.

By report dated October 15, 1997, Dr. Kunec reviewed appellant's history, conducted a physical examination, noted that she was working full duties and opined that appellant had "some residuals of an irritated lumbar nerve root." He opined that appellant had "some disorder of one of the lumbar discs," and that she continued to have problems with this from time to time.

By letter dated October 29, 1997, the Office requested clarification from Dr. Kunec.

By report dated November 10, 1997, Dr. Kunec responded to the Office noting: "I believe that [appellant] had probably suffered some lumbar nerve root irritation, which irritated

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<sup>1</sup> The Office accepted that appellant sustained right calf strain, lumbosacral strain and right sciatica, causally related to her November 9, 1992 employment incident.

<sup>2</sup> Docket No. 95-2100 (issued June 17, 1997).

the sciatic nerve branches to the lower leg. I believe that the incident that occurred at work resulted in the complaint for which she [sought treatment].” He continued, regarding appellant’s date-of-injury complaint of pain into the right leg: “I believe that [appellant] was probably dealing with referred pain in the lower leg as a result of irritation to one of the lumbar nerve root branches that occurred on November 9, 1992.”

Subsequently, on December 10, 1997 the Office accepted that appellant sustained a recurrence of disability.

On February 19, 1998 the Office received a May 10, 1994 report from Dr. Eric G. Dawson, a Board-certified orthopedic surgeon, which noted that when he first examined appellant on January 5, 1993, she appeared to have a sciatic nerve injury. Also on that date the Office received an August 5, 1994 report, which noted that electromyogram (EMG) testing and nerve conduction velocity (NCV) testing documented sciatic nerve injury and which opined that appellant had documented sciatic nerve impingement and involvement which would cause the signs and symptoms she described. Additionally, that date the Office received a March 10, 1995 report from Dr. Dawson, which reviewed appellant’s history of injury, noted that examination revealed not only ranges of motion deficits but strength deficit as well as neurosensory deficits, which he felt was equivalent to primary sciatica. He continued:

“It is noted that the sciatic nerve is a very long nerve originating with the nerve roots in the lower lumbar region and extending down the length of the leg. It is occasionally somewhat taut in nature as there are varied degree[s] of connective tissue within it and a twisting type injury is often times seen as the mechanism of injury for this. We find this not surprising with the result [appellant] has had.”

On March 16, 1998 the Office received a May 10, 1994 report from Dr. Dawson, which noted that on January 5, 1993 by examination appellant was found to have sciatic nerve injury, that “[s]he has also shown signs of more distal impingement as we have often seen with proximal sciatic injuries,” which he noted included tarsal tunnel syndrome.

On September 10, 1999 appellant filed a Form CA-7 claim for a schedule award.

By report dated October 27, 1999, Dr. Dawson noted that he diagnosed “a primary sciatica, that is a stretch type tearing injury to the connective tissue elements of the sciatic nerve itself,” noted that appellant demonstrated “not only neurosensory, but neuromuscular loss to the right lower extremity,” and indicated that her February 24, 1993 EMG demonstrated sciatica, inflammation of the sciatic nerve and injury to the sciatic nerve. He noted that discomfort in appellant’s right calf area would be due to “part of the distal innervation of the sciatic nerve and its branches includ[ing] those to the gastrocnemius and soleus muscles, in particular.” Dr. Dawson noted that appellant’s sciatic nerve presentation could be summed up as an axial neurologic deficit, which meant that where ever the nerve went could be a source of symptoms or exacerbation of a referred nature. He explained that “[t]echnically, [appellant] does not have a spinal injury, which would be a resultant secondary sciatica, but rather [has] an injury to the sciatic nerve itself. Dr. Dawson noted that appellant had chronic problems and sequelae related to the sciatica, including positive straight leg raising at 40 degrees on the right, stamina weakness of the knee flexor group, weakness to dorsiflexion of the ankle and soft touch partial loss

following the distal sensory distribution of the branches of the sciatic nerve and he indicated that range of motion criteria was misleading and that appellant should be rated on motor and sensory losses.

Dr. Dawson noted that the sciatic nerve was composed of nerve roots L4-5 and S1 and that significant contributions by the L5 and S1 roots were noted in appellant's case. He discussed appellant's motor and sensory impairment and opined that she had a 9 percent impairment for sensory loss, a 9 percent impairment for both L4 and S1 and an 11 percent impairment of L5, based upon EMG and NCV studies which documented this and he noted that appellant had exacerbation of the external rotators, the piriformis and gemelli muscles compressing the sciatic nerve closer to its origin, which added inflammationally but did not add to the percentage of disability. Dr. Dawson noted that the American Medical Association, *Guides to the Evaluation of Permanent Impairment* did not discuss peripheral nerve impairment for the lower extremities in terms of disability numbers.

The Office referred the case record to the Office medical adviser with a request for an opinion as to whether appellant was entitled to a schedule award. On March 15, 2000 the Office medical adviser opined that appellant was not entitled to a schedule award because "there was no documentation of nerve root impairment by CT [computerized tomography] scan, myelogram or MRI [magnetic resonance imaging]." The Office medical adviser also opined that EMG [and] NCV studies are not accurate in diagnosing lumbar nerve root impairment and no [schedule award] can be provided solely on that basis."

By decision dated March 22, 2000, the Office denied appellant's request for a schedule award finding that there was no documentation of nerve root impairment by CT scan, myelogram or MRI scan and that, therefore, there was no basis for a schedule award.

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

The schedule award provision of the Federal Employees' Compensation Act<sup>3</sup> and its implementing regulations<sup>4</sup> set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>5</sup> However, neither the Act nor its regulations specify the manner in which the percentage of loss of a member is to be determined. For consistent results and to insure equal justice under the law to 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 seeking schedule awards. The A.M.A., *Guides* (4<sup>th</sup> ed.) have been adopted by the implementing regulations as the appropriate standards for evaluating schedule losses.<sup>6</sup>

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*; *see* 5 U.S.C. § 8107(c).

<sup>4</sup> 20 C.F.R. § 10.304.

<sup>5</sup> 5 U.S.C. § 8107(c)(19).

<sup>6</sup> 20 C.F.R. § 10.404 (1999).

Although the standards for evaluating the permanent impairment of an extremity under the A.M.A., *Guides* are based primarily on loss of range of motion, all factors that prevent a limb from functioning normally, including pain and loss of strength, should be considered, together with loss of motion, in evaluating the degree of permanent impairment.<sup>7</sup> Chapter 3.2 of the A.M.A., *Guides* provides a grading scheme and procedure for determining impairment of the lower extremity.

In the instant case, appellant's treating physician, Dr. Dawson, provided multiple reports describing the nature and extent of her right sciatic nerve injury with respect to weakness and pain and he suggested impairment ratings of 9 percent for the L4 nerve root, 11 percent for the L5 nerve root and 9 percent for the S1 nerve root as demonstrated by electrodiagnostics, after referring to the A.M.A., *Guides*.

However, the Office medical adviser disagreed, opining that there was not documentation of nerve root impairment by CT scan, myelogram or MRI scan and that EMG and NCV studies were not accurate in diagnosing lumbar nerve root impairment and no schedule award can be provided solely on that basis. As the Office medical adviser disagreed with the reports of appellant's treating physician, a conflict in medical opinion evidence arose.

The Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

Therefore, the case must be remanded to the Office for preparation of a statement of accepted facts and questions to be addressed, to be followed by a referral to an appropriate specialist for a rationalized opinion to resolve the conflict as to whether appellant is entitled to a schedule award for permanent impairment causally related to her accepted employment injuries.<sup>8</sup>

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<sup>7</sup> See *Paul A. Toms*, 28 ECAB 403 (1987).

<sup>8</sup> On appeal appellant submitted additional relevant medical evidence, however, as that evidence was not before the Office at the time of its most recent merit decision it is not now before the Board on this appeal. See 20 C.F.R. § 501.2(c).

Consequently, the March 22, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further development in accordance with this decision of the Board.

Dated, Washington, DC  
August 9, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Member