

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JERRY BARTON and DEPARTMENT OF DEFENSE,  
DEFENSE MAPPING AGENCY, St. Louis, MO

*Docket No. 00-1118; Submitted on the Record;  
Issued February 22, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has more than a 17 percent permanent impairment of the left lower extremity for which he received a schedule award.

On August 23, 1996 appellant, then a 56-year-old negative engraver, filed a traumatic injury claim alleging that on August 13, 1996 he experienced pain in his low back as he was moving large format boxes. On August 22, 1997 the Office of Workers' Compensation Programs accepted that appellant sustained an employment-related herniated disc at L4-5 for which he underwent an authorized discectomy. On October 22, 1998 appellant filed a schedule award claim.

Following a request by the Office, in a report dated October 28, 1998, Dr. George E. Mendelsohn, appellant's treating physician, indicated:

"I think this patient has residual limitation of motion of the lumbar spine as well as weakness and numbness in the left lower extremity as described above. I believe he has sustained a 25 percent permanent disability as a result of the herniated disc for which he underwent surgery."

In a report dated September 5, 1999, the district medical adviser, Dr. David M. Smink stated:

"Dr. Mendelsohn's latest examination report [of] October 28 1998 serves as the basis for this [permanent impairment] recommendation. In this correspondence he recommends 25 percent ... impairment for the left lower extremity, but his arrival at this figure is not detailed. Mr. Barton reports residual left foot cramping and distal leg numbness. His physical examination reveals 4/5 motor strength in his left anterior tibialis and extensor hallucis longus muscles. According to the A.M.A., *Guides* ... Tables 38 and 39 p[age] 3/77 this entitles the claimant to 14

percent ... permanent impairment of the left lower extremity. Sensory changes in the L5 distribution of his left leg also warrants three percent ... impairment of the left lower extremity according to Table 68 page 3/89 of the A.M.A., *Guide[s]*. No other objective deficits are documented. Therefore, according to the A.M.A., *Guides'* Combined Values Chart p[age] 322 the total left lower extremity impairment is 17 percent.”

Dr. Smink also determined that appellant had reached maximum medical improvement as of November 1, 1996.

By decision dated December 7, 1999, the Office granted appellant a schedule award for a 17 percent impairment of the left lower extremity for the period of November 1, 1996 to October 9, 1997 for a total of 48.96 weeks of compensation.

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

Initially, the Board notes that the schedule award indicated that it was for an “upper” extremity impairment rather than a lower extremity impairment. Section 8107(c)(2) of the Federal Employees’ Compensation Act<sup>1</sup> provides that if there is a permanent disability involving the loss of a leg, the claimant shall receive 288 weeks of compensation. In this case, the Office awarded appellant 48.96 weeks of compensation, which equates to 17 percent permanent loss of use of the leg, or left lower extremity. In reviewing the Office decision of December 7, 1999, it is thus apparent that the Office’s award is for permanent disability of the left lower extremity and the indication that it is for the left upper extremity is a typographical error.

Under section 8107 of the Act<sup>2</sup> and section 10.404 of the implementing federal regulations,<sup>3</sup> 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*<sup>4</sup> have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>5</sup>

The Board has long held that a medical opinion regarding permanent impairment, which is not based upon the A.M.A., *Guides*, the standard adopted by the Office and approved by the Board as appropriate for evaluating schedule losses, is of little probative value in determining the

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<sup>1</sup> 5 U.S.C. § 8108(c)(2).

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999).

<sup>4</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993).

<sup>5</sup> *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

extent of a claimant's permanent impairment.<sup>6</sup> In this case, Dr. Mendelsohn did not apply the standards set forth in the A.M.A., *Guides*. His October 28, 1998 report is, therefore, of little probative value. Thus, the Office properly requested that the district medical adviser provide an opinion regarding the extent of appellant's permanent impairment pursuant to the A.M.A., *Guides*.

Section 3.2 of the A.M.A., *Guides*, provides the method for analyzing the lower extremity and indicates that only one method should be utilized in evaluating a specific impairment and that, if there are several impairments of the same lower extremity, the Combined Values Chart should be utilized.<sup>7</sup> It further indicates that impairments for muscle weakness are to be assessed utilizing Tables 38 and 39<sup>8</sup> and impairments from nerve deficits under Table 68.<sup>9</sup>

In this case, the Board finds that the opinion of the district medical adviser, who evaluated Dr. Mendelsohn's findings, did not provide a sufficient explanation of his impairment rating. While he stated that he utilized Tables 38, 39 and 68, he did not set forth how he arrived at the finding of a 14 percent impairment due to muscle weakness<sup>10</sup> and did not fully explain his estimate of 3 percent under Table 68.

The case will, therefore, be remanded to the Office for further development consistent with this decision of the Board and with the fourth edition of the A.M.A., *Guides*. After such development as it deems necessary, the Office shall issue a *de novo* decision.

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<sup>6</sup> *James Kennedy Jr.*, 40 ECAB 620 (1989).

<sup>7</sup> A.M.A., *Guides* at 75.

<sup>8</sup> A.M.A., *Guides* at 77.

<sup>9</sup> A.M.A., *Guides* at 89.

<sup>10</sup> Table 39 provides a chart divided by muscle group for hip, knee, ankle and great toe impairments.

The decision of the Office of Workers' Compensation Programs dated December 7, 1999 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC  
February 22, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member