

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY T. HARGRAVES and U.S. POSTAL SERVICE,
POST OFFICE, Trenton, NJ

*Docket No. 00-1569; Submitted on the Record;
Issued July 3, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

This is the third appeal before the Board in this case. By decision dated July 25, 1997,¹ the Board affirmed the Office of Workers' Compensation Programs' October 26, 1994 decision, finding that appellant had no more than a one percent permanent impairment of his right lower extremity. The Board further affirmed the Office's April 5, 1995 decision, denying appellant's request for reconsideration under 5 U.S.C. § 8128. On appeal for the second time, the Board set aside the Office's September 22, 1997 decision, denying appellant's request for reconsideration under section 8128 and remanded the case for merit review.² The findings of fact and conclusions of law set forth in the prior decisions are hereby incorporated by reference.

By decision dated January 10, 2000, the Office denied modification of its prior decision.

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

The schedule award provisions of the Federal Employees' Compensation Act³ and its implementing federal regulations,⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss 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

¹ Docket No. 95-2424.

² Docket No. 98-663 (issued September 27, 1999).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

may be uniform standards applicable to all claimants. The American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Appellant submitted a revised report dated August 11, 1993 from Dr. David Weiss, an osteopath, who found that he had an 18 percent permanent impairment of the right leg.⁵ He indicated that he calculated appellant's impairment according to Table 75 on page 113 and Tables 81 to 82 on page 130 of the fourth edition of the A.M.A., *Guides*. However, the pages and tables cited by Dr. Weiss in his August 11, 1993 report are relevant to impairments of the spine. Schedule awards are not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.⁶ The Act itself specifically excludes the back from the definition of organ.⁷ As neither the Act nor the regulations provide for the payment of a schedule award for impairments of the back, appellant is not entitled to such an award.⁸ Therefore, as Dr. Weiss used the tables and pages of the A.M.A., *Guides* relevant to spinal impairments in determining appellant's right lower extremity impairment, his revised August 11, 1993 report is of little probative value.

Appellant further submitted an addendum from Dr. Weiss dated August 26, 1997. In his addendum, Dr. Weiss found that, according to Tables 83 and 11 on pages 130 and 48 of the A.M.A., *Guides*, appellant had a 4 percent impairment of the right lower extremity due to right lumbosacral radiculopathy. An Office medical adviser reviewed Dr. Weiss' August 11, 1993 and August 26, 1997 reports and indicated that his finding that appellant had a one percent impairment of the right lower extremity remained unchanged. However, the Office medical adviser did not provide any rationale in support of his opinion. In his prior review of Dr. Weiss' August 11, 1993 and August 26, 1997 reports, the Office medical adviser found that the reports did not support an award for an impairment of the body enumerated in the Act. However, Table 83 on page 130 of the A.M.A., *Guides*, entitled "Unilateral Spinal Nerve Root Impairment Affecting the Lower Extremity," is relevant to determining impairments of the lower extremities.⁹ The schedule award provisions of the Act provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. As the schedule award

⁵ The record contains a prior report from Dr. Weiss, dated August 11, 1993, in which he found that appellant had a 23 percent permanent impairment of the right leg. The Board previously determined that Dr. Weiss' prior August 11, 1993 report was insufficient to establish that appellant had more than a one percent permanent impairment of the right leg; see *Larry T. Hargraves*, Docket No. 95-2424 (issued July 25, 1997). The record also contains a copy of Dr. Weiss' August 11, 1993 report in which Dr. Richard Levandowski, who is Board-certified in family practice, indicated that he concurred with Dr. Weiss' finding that appellant had a 23 percent permanent impairment of his right leg.

⁶ *George E. Williams*, 44 ECAB 530 (1993).

⁷ 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...."

⁸ See *George E. Williams*, *supra* note 6.

⁹ Additionally, the A.M.A., *Guides* provide that Table 83 is properly used in conjunction with Table 11 on page 48. See A.M.A., *Guides* at 130.

provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the spine.¹⁰

In this case, the Office medical adviser did not provide any explanation for his opinion that the prior impairment determination remained unchanged after review of Dr. Weiss' reports. Office procedures require that the Office medical adviser provide rationale for the specified degree of permanent impairment.¹¹ The case, therefore, is remanded for the Office to obtain a rationalized opinion from an Office medical adviser regarding the degree of permanent impairment of appellant's right lower extremity.

The decision of the Office of Workers' Compensation Programs dated January 10, 2000 is set aside and the case is remanded for further proceedings consistent with this opinion by the Board.

Dated, Washington, DC
July 3, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹⁰ *Rozella L. Skinner*, 37 ECAB 298 (1986).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (November 1998).