

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN S. COX and DEPARTMENT OF THE NAVY,
CHARLESTON NAVAL SHIPYARD, Charleston, SC

*Docket No. 00-2155; Submitted on the Record;
Issued July 9, 2001*

DECISION and ORDER

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

The issue is whether appellant has more than a three percent impairment of his left lower extremity, for which he received a schedule award.

On April 22, 1994 appellant, then a 46-year-old crane operator, sustained a lower back injury while in the performance of duty. The Office of Workers' Compensation Programs accepted his claim for lumbar strain and herniated nucleus pulposus at L4-5. Additionally, the Office twice authorized surgical laminectomy and discectomy at L4-5. Appellant initially underwent surgery on August 30, 1994, which was followed by a second procedure on September 9, 1998. By decision dated May 15, 2000, the Office granted appellant a schedule award for a three percent permanent impairment of his left lower extremity. The award covered a period of 8.64 weeks.

The Board finds that appellant has not establish that he has more than a three percent permanent impairment of his left lower extremity.

Section 8107 of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) as an appropriate standard for evaluating schedule losses and the Board has concurred in such adoption.²

¹ 5 U.S.C. § 8107.

² *James J. Hjort*, 45 ECAB 595 (1994).

Appellant alleges that he has a 35 percent permanent impairment of his left lower extremity based on the December 2, 1999 report of his treating physician, Dr. Donald R. Johnson, II, a Board-certified orthopedic surgeon. However, upon review of Dr. Johnson's report, the Office medical adviser concluded that Dr. Johnson had not provided adequate evidence based on history and physical examination to support his impairment rating. The Office, therefore, referred appellant for a second opinion evaluation by Dr. Gerald Schuster, a Board-certified orthopedic surgeon. Upon reviewing Dr. Schuster's February 17, 2000 findings, the Office medical adviser determined that appellant had a three percent permanent impairment of his left lower extremity.

The Office medical adviser calculated a three percent impairment due to sensory deficit in accordance with Tables 11 and 83 of the A.M.A., *Guides*, at pages 48 and 130, respectively. Additionally, based on Dr. Schuster's physical findings, the Office medical adviser explained that there was no loss of motor power, no atrophy present and no permanent impairment due to weakness. Inasmuch as the Office medical adviser's calculation of appellant's left lower extremity impairment conforms to the A.M.A., *Guides* (4th ed. 1993), his finding constitutes the weight of the medical evidence.³ Although Dr. Johnson calculated a considerably higher impairment rating, his December 2, 1999 report did not provide a sufficiently detailed description of appellant's impairment and, therefore, was of limited probative value in determining the extent of appellant's impairment under the A.M.A., *Guides*.⁴ Accordingly, appellant has failed to provide any probative medical evidence that he has greater than a three percent impairment of the left lower extremity.⁵

³ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

⁴ *Noe L. Flores*, 49 ECAB 344, 347 (1998).

⁵ The Act provides that, for a total or 100 percent loss of use of an arm, an employee shall receive 288 weeks compensation. 5 U.S.C. § 8107(c)(2). In the instant case, appellant does not have a total, or 100 percent loss of use of his left lower extremity, but rather a 3 percent loss. As such, appellant is entitled to 3 percent of the 288 weeks of compensation, which is 8.64 weeks.

The May 15, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 9, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member