

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAULINE L. THOMAS and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Washington, DC

*Docket No. 00-2120; Submitted on the Record;
Issued June 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established a recurrence of disability as of April 1996; and (2) whether appellant has more than a 15 percent permanent impairment to the right leg and a 10 percent impairment to the left leg.

On May 15, 1995 appellant, then a 61-year-old nursing assistant, filed a claim alleging that she sustained a back injury on May 9, 1995 as a result of lifting and moving patients. The Office of Workers' Compensation Programs accepted the claim for a lumbar strain. Appellant returned to a light-duty position and retired from federal employment in April 1996.

On June 12, 1998 appellant filed a notice of recurrence of disability (Form CA-2a). By decision dated October 23, 1998, the Office denied the claim for a recurrence of disability. In a decision dated July 22, 1999, an Office hearing representative modified the prior decision to accept an L5-S1 disc herniation, and otherwise affirmed the denial of the recurrence of disability claim.

On September 19, 1999 appellant filed a Form CA-7 (claim for compensation on account of traumatic injury or occupational disease), indicating that she was claiming entitlement to a schedule award. By decision dated May 12, 2000, the Office issued an award for a 15 percent permanent impairment for the right leg and 10 percent for the left leg. The period of the award was 72 weeks of compensation from March 30, 1999.

The Board finds that appellant has established a recurrence of disability as of April 30, 1996.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this

burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.¹

It is well established that, if the employing establishment determines that it no longer can provide a light-duty position within a claimant's physical restrictions, then a change in the nature and extent of the light-duty job has been established.² The record contains an October 30, 1995 memorandum from the employing establishment noting that it had provided light duty since the injury, but could not continue to provide light duty indefinitely. The employing establishment advised appellant that light duty would be provided through April 30, 1996, but no further light duty would be approved after that date. This memorandum clearly establishes that the employing establishment had withdrawn the light-duty job as of April 30, 1996. The hearing representative acknowledged in her factual recitation that the light duty would not be available as of April 30, 1996, but denied the recurrence of disability claim solely on medical grounds. The Board finds that appellant has established a recurrence of disability because she has established a change in the nature and extent of the light-duty job requirements as of April 30, 1996.

The Board further finds that the evidence does not establish more than a 15 percent permanent impairment to the right leg or a 10 percent permanent impairment to the left leg.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.³ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.⁴

In this case, the record contains an undated report, received by the Office on March 20, 2000, from Dr. Frederick Gooding, diagnosing herniated lumbar disc L5-S1 and lumbar radiculopathy. Dr. Gooding noted a chronic L5 radiculopathy on the right and mild acute irritation of the S1 nerve on the left. In a report dated April 3, 2000, an Office medical adviser opined that, based on Table 83 of the A.M.A., *Guides*, appellant had a 15 percent impairment to the right leg and 10 percent to the left. The Board notes that Table 83 provides nerve root impairments affecting the lower extremities; an L5 impairment has a maximum of 5 percent for pain and 37 percent for strength deficit (40 percent maximum impairment for the leg).⁵ An S1

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Jackie B. Wilson*, 39 ECAB 915 (1988); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997). There are certain exceptions, such as a reduction-in-force affecting both light-duty and regular positions, that are not applicable here.

³ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁴ *A. George Lampo*, 45 ECAB 441 (1994).

⁵ A.M.A., *Guides* (4th ed. 1993), 130, Table 83.

impairment has a 5 percent maximum for pain, 20 percent for strength deficit, with an overall maximum of 24 percent. The impairments are evaluated following the procedures set forth in Tables 11 and 12. The medical adviser found 15 percent for the right leg and 10 percent for the left, based on the report of Dr. Gooding. The record does not contain any other probative medical evidence with respect to the impairment under the A.M.A., *Guides*. The Board finds no probative evidence of a greater impairment in the record. The award runs for 25 percent of the maximum 288 weeks of compensation, or 72 weeks of compensation from the date of maximum medical improvement.⁶

The decision of the Office of Workers' Compensation Programs dated July 22, 1999 is reversed; the decision dated May 12, 2000 is affirmed.

Dated, Washington, DC
June 8, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁶ 5 U.S.C. § 8107(c); *see also Albert Valverde*, 36 ECAB 233, 237 (1984).