

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN E. BARRETT and DEPARTMENT OF VETERANS AFFAIRS,
WILMINGTON VETERANS HOSPITAL, Wilmington, DE

*Docket No. 99-2550; Submitted on the Record;
Issued May 24, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to more than a 10 percent permanent impairment for his right leg and a 10 percent permanent impairment for his left leg, for which he received a schedule award.

On March 10, 1989 appellant, then a 41-year-old housekeeping aid, filed a traumatic injury claim alleging that on March 5, 1989 he injured his back while lifting a dirty laundry sack.

By letter dated May 31, 1989, the Office of Workers' Compensation Programs accepted appellant's claim for aggravation of lumbar degenerative joint disease.

By decision dated July 14, 1999, the Office granted appellant a schedule award for a 10 percent permanent impairment for his right leg and a 10 percent permanent impairment for his left leg.¹

The Board has duly reviewed the case record in this appeal and finds that the case is not in posture for decision as to whether appellant is entitled to more than a 10 percent permanent impairment for his right leg and a 10 percent permanent impairment for his left leg, for which he received a schedule award.

¹ In a July 28, 1994 letter, the Office advised appellant's counsel that appellant was entitled to a schedule award for a 10 percent impairment of the right and left lower extremities. In a July 1, 1999 decision reducing appellant's wage-earning capacity based on his ability to perform the duties of the selected position of protective signal operator, the Office indicated that appellant was entitled to a schedule award.

The Office's procedure manual requires a claims examiner to advise any physician who evaluates permanent impairment to use the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and to report findings in accordance with those guidelines.²

As the A.M.A., *Guides* states:

“Using the *Guides* requires integrating previously gathered medical information with the results of a current medical evaluation. The evaluation should be carried out in accordance with the directions in the *Guides*, and it should be based on three components.

“First, certain types of information, described in Chapter 2, are needed to document the nature of an impairment and its consequences. Chapter 2 specifies how to acquire information and defines a format for analyzing, recording, and reporting the information. Second, the *Guides* chapters on the organ systems contain protocols or descriptions of ways to evaluate a particular body part, function, or system. Third, the chapters contain tables relating to the evaluation protocols. If the physician has followed the protocols and tables, then the reported findings will be congruent with the *Guides* criteria.”³

This case lacks a current medical evaluation carried out in accordance with the directions in the A.M.A., *Guides*. It appears that the Office relied on the June 29, 1992 medical report of Dr. Craig D. Sternberg, a Board-certified psychiatrist and appellant's treating physician, in determining appellant's impairment. Dr. Sternberg rated appellant's permanent impairment at 10 percent for the right lower extremity and 10 percent for the left lower extremity based on the (1992) A.M.A., *Guides*. However, he did not explain how he used the A.M.A., *Guides* to determine this percentage impairment. Inasmuch as Dr. Sternberg failed to demonstrate that he evaluated both lower extremities in accordance with the necessary protocols or sufficient clinical information to characterize the impairment in accordance with the requirements of the A.M.A., *Guides*, his report is insufficient to support a proper schedule award.

The Board will set aside the Office's decision and remand the case for further development of the medical evidence. On remand, the Office shall refer appellant to an appropriate medical specialist for an evaluation of both lower extremities, observing the protocols set forth in the fourth edition of the A.M.A., *Guides*. The Office shall refer this evaluation to an Office medical adviser for a comparison of the clinical findings with the specific impairment criteria set forth in the A.M.A., *Guides*. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's entitlement to a schedule award.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(c) (December 1991).

³ A.M.A., *Guides* (4th ed. 1993).

The July 14, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further consideration consistent with this decision.

Dated, Washington, DC
May 24, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member