

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD F. LAFOUNTAIN and U.S. POSTAL SERVICE,  
HARTFORD GENERAL MAIL FACILITY, Hartford, CT

*Docket No. 01-347; Submitted on the Record;  
Issued September 19, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has more than a one percent permanent impairment of the right leg.

On April 10, 1989 appellant, then a 41-year-old mailhandler, was lifting a heavy sack of mail into a mail cart when the load in the sack shifted as he was lifting it. He developed pain in the small of his back. Appellant stopped working on April 11, 1989 and used leave through April 24, 1989. He received continuation of pay for the period April 25 through June 3, 1989. In an April 27, 1989 report, Dr. Robert Feld, a Board-certified radiologist, stated that a computerized tomography scan of the lumbar spine showed a herniated disc at L4-5 on the right side of the spinal canal. On August 30, 1989 appellant underwent a lumbar laminectomy for excision of the herniated disc. He returned to light-duty work on October 23, 1989. The Office of Workers' Compensation Programs accepted appellant's claim for back strain and paid temporary total disability compensation for the period he did not work. The Office subsequently accepted appellant's claim for a herniated L4-5 disc and resulting surgery.

In a July 11, 1994 letter, appellant's attorney indicated that appellant was seeking a schedule award. In a December 27, 1999 decision, the Office issued a schedule award for a one percent permanent impairment of the right leg. Appellant requested a written review of the record by an Office hearing representative. In an October 4, 2000 decision, the Office hearing representative affirmed the Office's December 27, 1999 decision.

The Board finds that the case is not in posture for decision due to a conflict in the medical evidence.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>3</sup> has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>4</sup>

In an August 10, 1999 report, Dr. W. Jay Krompinger, a Board-certified orthopedic surgeon, indicated that appellant complained of fatigability and pain down the right leg. He noted that reflexes at the knees and ankles were symmetrical. He found no specific weakness to manual testing. In an August 25, 1999 report, Dr. Krompinger stated that appellant had some signs of subjective dysfunction in the right leg. He noted that appellant had an endurance limitation but did not have any specific neurological deficits. He concluded that appellant had a five percent permanent impairment of the right leg secondary to the lower back injury.

The Office referred the case to an Office medical adviser for his review and opinion. In a September 27, 1999 memorandum, the Office medical adviser stated that the August 10, 1999 report showed that appellant had pain in the right leg with some residual numbness, symmetrical reflexes and no loss of strength. He indicated that, under the A.M.A., *Guides*, a maximum five percent permanent impairment of the leg was allowed for impairment of the superficial peroneal nerve, the only L4-5 nerve root rated in the A.M.A., *Guides*. He concluded that appellant had a Grade 2 or 25 percent impairment due to pain. He therefore multiplied the 25 percent grade of pain by the 5 percent maximum permanent impairment and concluded that appellant had a 1 percent permanent impairment of the right leg.

In a January 14, 2000 report, Dr. Krompinger stated that appellant had pain and dysfunction in an L5 distribution. He commented that the findings did not simply reflect sensory loss in a superficial peroneal distribution but also some fatigability in the strength of the L5 innervated musculature. He indicated that it was difficult to assess on a one-time evaluation but reported that appellant would have some fatigability with repeated stress required in a full day of work or similar activity. He concluded that appellant had some permanent impairment secondary to both motor and sensory effects of the L5 nerve root.

There exists, therefore, a conflict in the medical evidence on the extent of appellant's permanent impairment. Dr. Krompinger, appellant's treating physician, stated that the permanent effects of the employment injury affected appellant's strength and caused pain in the

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<sup>1</sup> 5 U.S.C. § 8107(c).

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> (4<sup>th</sup> ed. 1993).

<sup>4</sup> *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

right leg. The Office medical adviser restricted the permanent impairment measurement to pain affecting the peroneal nerve. The case must therefore be remanded for referral of appellant to resolve the conflict in the medical evidence.

On remand, the Office should refer appellant, together with a statement of accepted facts and the case record, to an appropriate impartial medical specialist for an examination. The specialist should describe appellant's physical findings with particular attention to those items that would affect a determination of the permanent impairment caused by the April 10, 1989 employment injury to the back. The specialist should then provide an estimate of the extent of appellant's permanent impairment of the right leg in accordance with the A.M.A., *Guides*. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs, dated October 4, 2000 and December 27, 1999, are hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC  
September 19, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member