

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAUL A. GARCIA and U.S. POSTAL SERVICE,
POST OFFICE, Visalia, CA

*Docket No. 01-484; Submitted on the Record;
Issued September 21, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to more than a five percent impairment of both lower extremities for which he received a schedule award.

The Board has reviewed the record and finds that appellant has no more than a 5 percent permanent impairment of each extremity.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Appellant, then a 42-year-old letter carrier, hurt his lower back on October 12, 1995 while reaching over a large bulk mail tray and pulling a heavy weight. The Office of Workers' Compensation Programs accepted the claim for sciatica, with subsequent decompression and disc removal surgery at L4-5. Appellant returned to part-time modified work on October 28, 1996 and resumed full-time limited duty on January 27, 1997.

Dr. Peter Morrison, a Board-certified orthopedic surgeon, reported on March 28, 1997 that appellant had some subjective complaints following surgery but no strong objective findings

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

and no significant impairment of the lower extremities, other than that related to removal of the lower lumbar disc. In a July 22, 1997 report, he indicated that appellant had reached maximum medical improvement.

The Office referred appellant to Dr. J.R. Lee, a Board-certified orthopedic surgeon, who examined appellant on August 27, 1997 to determine the extent of his work-related impairment. Dr. Lee reviewed appellant's work and medical history and subjective complaints. He examined appellant and determined that his back pain and limitation of motion was caused by the October 12, 1995 injury and consisted of a 10 percent impairment of the whole person based on page 80, Table 53, impairments of the spine, according to the A.M.A., *Guides*, third edition.

On October 7, 1997 an Office medical adviser reviewed the medical record, including reports from Dr. Morrison and the impairment evaluation of Dr. Lee. While Dr. Lee's evaluation did not demonstrate any muscle weakness, it did reveal residual pain. The Office medical adviser noted appellant's diagnosed chronic bilateral S1 radiculopathy and status post lumbar laminectomy and discectomy L5-S1, July 31, 1996. He stated:

"For purposes of a schedule award, it should be noted that Dr. Lee has calculated impairment rating based on limitation of the spine. It should be noted that the Office only allows schedule awards involving the lower extremities. As such, I feel [appellant's] impairment can be best rated utilizing unilateral spinal nerve root impairment affecting lower extremities (Table 83/page 130). As [appellant] has no muscle weakness, there is no impairment for loss of strength. However, he does have residual pain and, as such, [appellant] has a five percent impairment of each lower extremity. The five percent impairment of each lower extremity is the sole impairment resulting from the accepted work injury of October 12, 1995."

By decision dated October 20, 1997, the Office issued a schedule award for 5 percent impairment of each leg due to the work-related condition.

On March 4, 1998 appellant appealed the schedule award to the Office.³ By merit decision dated October 30, 2000, the Office denied modification of the schedule award on the grounds that the evidence of record did not establish an error in computation of the 10 percent rating.

In this case, Dr. Lee based his schedule award calculation on appellant's limitation of the spine. However, as the Office medical adviser correctly pointed out, Office procedure only allows schedule awards for nerve root impairment associated with the lower extremity. Further, Dr. Lee's reported 10 percent impairment, of the spine, was derived from the third edition of the A.M.A., *Guides*. The Office medical adviser properly used the appropriate table of the fourth

³ The Board notes that appellant did not initially designate which type of appeal he sought, however, in a subsequent letter dated March 26, 1998, he requested an oral hearing. On April 24, 1998 the Office denied appellant's request for a hearing as untimely. Appellant appealed to the Board and by order dated May 6, 1999, the Board remanded the case to the Office for reconstruction and proper assemblage of the case record and issuance of an appropriate decision to protect appellant's appeal rights. (Docket No. 98-1216) The October 30, 2000 merit decision ensued.

edition of the A.M.A., *Guides* to conclude that appellant had five percent impairment of each leg. The Office procedures direct the use of the third edition, revised, for schedule awards determined between September 1, 1991 and October 31, 1993 and the fourth edition, issued in 1993, for schedule awards determined on and after November 1, 1993 until January 31, 2001.⁴

When the treating physician does not properly use the A.M.A., *Guides* in determining permanent impairment, it is appropriate for the Office medical adviser to apply the A.M.A., *Guides* to the findings presented by the treating physician.⁵ As the Office medical adviser's report is the only evaluation that conforms to Office procedures and the correct edition of the A.M.A., *Guides*, it constitutes the weight of the medical evidence.

The October 30, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 21, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁴ See *John Yera*, 48 ECAB 243, 247 (1996); see also FECA Bulletin 01-05 (January 2001).

⁵ See *Lena P. Huntley*, 46 ECAB 643 (1995).