

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY T. HARGRAVES and U.S. POSTAL SERVICE,
POST OFFICE, Trenton, NJ

*Docket No. 02-579; Submitted on the Record;
Issued August 8, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a one percent permanent impairment of the right lower extremity for which he received a schedule award.

This is the fourth appeal before the Board in this case. By decision dated July 25, 1997,¹ the Board affirmed the Office of Workers' Compensation Programs' October 26, 1994 decision, finding that appellant had no more than a one percent permanent impairment of his right lower extremity. The Board affirmed the Office's April 5, 1995 decision denying appellant's request for reconsideration. On appeal for the second time, the Board set aside the Office's September 22, 1997 decision denying appellant's request for reconsideration and remanded the case for merit review of his claim.² In the third appeal, the Board set aside the Office's January 10, 2000 decision and remanded the case for the Office to obtain a rationalized opinion from an Office medical adviser regarding the degree of appellant's permanent impairment of his right lower extremity.³ The findings of fact and conclusions of law set forth in the prior decisions are hereby incorporated by reference.

By decision dated September 21, 2001, the Office denied modification of its February 18, 1994 decision on the grounds that the evidence established that appellant had no more than a one percent permanent impairment of his right lower extremity.

The Board finds that appellant has no more than a one percent permanent impairment of the right lower extremity for which he received a schedule award.

¹ *Larry T. Hargraves*, Docket No. 95-2424 (issued July 25, 1997).

² *Larry T. Hargraves*, Docket No. 98-663 (issued September 27, 1999).

³ *Larry T. Hargraves*, Docket No. 00-1569 (issued July 3, 2001).

The schedule award provisions of the Federal Employees' Compensation Act⁴ and its implementing federal regulations,⁵ 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 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.⁶ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁷

By letter dated July 30, 2001, the Office requested that an Office medical adviser review the August 1, 1993 and August 26, 1997 reports of Dr. David Weiss, an osteopath, and provide a rationalized opinion on the extent of appellant's permanent impairment of the right lower extremity in accordance with the fourth edition of the A.M.A., *Guides*.⁸

In a report dated August 28, 2001, an Office medical adviser stated:

“Based upon the 1993 report of Dr. Weiss, I see no basis for awarding a [percentage] loss for [right]-sided lumbosacral radiculopathy. The range of motion [and] sensory exam[ination] was normal, therefore, there is no radiculopathy. Also, Dr. Weiss gave five [percent] for a pos[itive] EMG [electromyogram] but gave no table or page reference in the A.M.A., *Guides*, that would allow this [percentage]. I could find no such table either.”

Regarding the August 26, 1997 report, the Office medical adviser noted that Dr. Weiss provided no physical findings on examination to support his determination that appellant had a four percent permanent impairment of the right lower extremity. The Office medical adviser noted that while, Dr. Weiss provided citations to the A.M.A., *Guides*, he did not “tell us what *factual evidence* he used when referring to those tables. If there was a normal motor [and] sensory exam[ination]. Those tables would [not] apply.” (Emphasis in the original.)

The Office medical adviser properly reviewed the medical reports of Dr. Weiss, as instructed by the Board on remand and explained that the normal physical findings in Dr. Weiss' 1993 report did not support his finding that appellant had an impairment due to right leg

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ 20 C.F.R. § 10.404(a).

⁷ See FECA Bulletin No. 01-5 (issued January 29, 2001).

⁸ The Board notes that under FECA Bulletin 01-5 (issued January 29, 2001), any new schedule award decision issued after February 1, 2001 must be based on the fifth edition of the A.M.A., *Guides*. In this case, the Board remanded the case for the Office medical adviser to provide rationale for his opinion that appellant had no more than a one percent impairment of the right lower extremity. Any error by the Office in failing to apply the fifth edition of the A.M.A., *Guides*, is harmless, however, as the Office medical adviser found the impairment determination by Dr. Weiss insufficiently supported by physical findings to support an additional award.

radiculopathy and that the A.M.A., *Guides* did not support his finding that appellant had a five percent impairment due to his positive electromyogram.⁹ The Office medical adviser further noted that Dr. Weiss provided no physical findings or medical rationale to explain how he reached the impairment determination in his August 26, 1997 report. Appellant, therefore, has not submitted the necessary medical evidence to establish that he sustained more than a one percent impairment of the right lower extremity.

The decision of the Office of Workers' Compensation Programs dated September 21, 2001 is affirmed.

Dated, Washington, DC
August 8, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁹ Appellant's schedule award for a one percent impairment of the right lower extremity was based on Dr. Weiss' finding of a five percent impairment due to L5 radiculopathy.