

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LARRY D. HUNDLEY and TENNESSEE VALLEY AUTHORITY,  
Chattanooga, TN

*Docket No. 02-1431; Submitted on the Record;  
Issued December 10, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for a schedule award.

On September 8, 1999 appellant, then a 54-year-old laborer, filed a claim alleging that he injured his back when he fell off a tractor. The Office accepted the claim for lumbar strain. Appellant stopped work on September 8, 1999 and did not return. Appropriate benefits were paid.

By letter dated October 29, 1999, the Office requested additional information from appellant including factual and medical evidence in support of his claim.

In support of his claim, appellant submitted several reports from Dr. William Coleman, Sr., a Board-certified family practitioner, dated October 13, 1999 to June 5, 2001; several medical reports from Dr. Rhett B. Murray, a Board-certified neurologist, dated October 14, 1999 to March 24, 2000; reports from Dr. Benjamin Walker, a Board-certified anesthesiologist, dated March 6 to May 4, 2000; and a magnetic resonance imaging (MRI) scan dated March 22, 2000. Dr. Coleman's reports note a history of appellant's work-related injury with progressive back pain. The reports from Dr. Murray indicated that appellant sustained a herniated disc at L3-4 as a result of his work injury. He noted appellant experienced intractable pain and recommended surgery. Dr. Murray noted performing a left L3-4 microdiscectomy on January 4, 2000. He diagnosed appellant with left L3-4 herniated nucleus pulposus. Dr. Walker indicated that he treated appellant with lumbar epidural steroid injections in an effort to manage appellant's back pain post surgery. The MRI scan dated March 22, 2000 revealed postoperative changes at left L3-4 with no acute findings.

On October 26, 2001 appellant filed a claim for a schedule award.

In a letter dated November 7, 2001, the Office requested that Dr. Murray evaluate appellant for permanent impairment arising from his accepted employment injury in accordance

with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (fifth edition 2001).

Dr. Murray submitted a report dated November 29, 2001 and noted he performed a L3-4 discectomy in January which resolved appellant's leg pain. He noted that appellant returned to work and was at maximal medical improvement. Dr. Murray indicated that appellant's straight leg raises were negative; strength was 5/5; sensation was intact and appellant walked with normal station and gait. He opined that appellant had degenerative disc disease. Dr. Murray further noted that appellant had a 10 percent disability to the body as a whole.

In a letter dated December 13, 2001, the Office requested that Dr. Murray reevaluate appellant for permanent impairment arising from his accepted employment injury in accordance with the A.M.A., *Guides*. The Office indicated that Dr. Murray incorrectly provided a whole body impairment rating for appellant in his report of November 29, 2001 and noted that the Office did not grant schedule awards based on the whole body impairment.

In a decision dated January 14, 2002, the Office denied appellant's claim for a schedule award.

The Board finds that the Office properly denied appellant's claim for a schedule award.

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 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

The Board has carefully reviewed Dr. Murray's report dated November 29, 2001 which determined appellant's impairment and notes that Dr. Murray did not adequately explain how his determination was reached in accordance with the relevant A.M.A., *Guides*.<sup>3</sup> Dr. Murray noted that he performed a L3-4 discectomy in January and that appellant's leg pain resolved. He noted appellant returned to work and was at maximal medical improvement. Dr. Murray indicated that appellant's straight leg raises were negative; strength was 5/5; sensation was intact and appellant walked with normal station and gait. He opined appellant had degenerative disc disease. Dr. Murray further noted that appellant had 10 percent disability to the body as a whole. However, he did not provide a numerical impairment rating in conformance with the A.M.A., *Guides*. He neither referenced the A.M.A., *Guides* nor did he cite to tables or charts for an impairment rating determination. The Office in letters dated November 7 and December 13, 2001 informed Dr. Murray of the deficiencies in his report of November 29, 2001, noting that the

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

Office did not grant impairment ratings based on the whole body, however, he did not respond to the Office's letter. Dr. Murray provided no clarification of his impairment rating by revealing his calculations for the rating including the percentage of impairment, if any, of the lower extremities using the A.M.A., *Guides*. The Board has determined that a medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value.<sup>4</sup> The Board finds that Dr. Murray did not properly follow the procedures as set forth in the A.M.A., *Guides*.<sup>5</sup>

The decision of the Office of Workers' Compensation Programs dated January 14, 2002 is hereby affirmed.

Dated, Washington, DC  
December 10, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>4</sup> See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed). *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

<sup>5</sup> With his appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c).