

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIO CINTRON and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 02-2038; Submitted on the Record;
Issued December 24, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether appellant has more than a seven percent permanent impairment to his right leg.

On April 6, 1998 appellant, then a 46-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that he sustained a back injury on April 3, 1998 while lifting a tub of mail in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for an L4-5 herniated disc. Appellant stopped working on April 3, 1998 and returned to work in a part-time position on August 20, 1998; he returned to full-time regular duty on October 20, 1998.

In a decision dated August 1, 2001, the Office issued a schedule award for a seven percent permanent impairment to the right leg. Appellant was awarded 20.16 weeks of compensation commencing January 2, 2000. The Office stated that the degree of impairment was calculated by an Office medical adviser using the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

By decision dated June 18, 2002, an Office hearing representative affirmed the schedule award decision.

The Board finds that the case is not in posture for a decision.

The schedule award provisions 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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

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.

With respect to the degree of permanent impairment, the evidence consists primarily of a January 2, 2000 report from an attending orthopedic surgeon, Dr. Roberto Levi and a February 10, 2001 report from an Office medical adviser. Neither of these reports are of sufficient probative value to resolve the issue in the case. Dr. Levi identified the S1 nerve root under Table 83 from the fourth edition (1995) of the A.M.A., *Guides*, stating that appellant had a 5 percent impairment for sensory deficit or pain and 20 percent for loss of function due to strength deficit.³ Dr. Levi did not properly apply Table 83, which required that the impairment be graded according to Tables 11 and 12. In addition, the accepted injury in the traumatic claim on April 3, 1998 was an L4-5 herniated disc and Dr. Levi notes a prior L5-S1 lumbar laminectomy performed in 1997. The statement of accepted facts notes that appellant underwent a lumbar laminectomy on August 11, 1997, without providing further detail or explanation as to whether the surgery was due to an employment-related condition.

The Office medical adviser stated that the accepted injury was an L5-S1 herniated disc with an original injury on April 3, 1998, which does not appear to be a correct history. In addition, the medical adviser identified the surreal nerve under Table 68 of the fourth edition, without clearly explaining why a nerve root impairment method, such as provided in Table 83, was not appropriate.⁴ Dr. Levi had noted the surreal nerve, although that appeared to be in reference to residual sensory deficit and pain from the 1997 surgery.

The Board also notes that as of February 1, 2001, the fifth edition (2001) of the A.M.A., *Guides*, was the appropriate edition for schedule award evaluations.⁵ The calculations in this case were based on the fourth edition.⁶

The case will be remanded to the Office for preparation of an accurate statement of accepted facts and a medical opinion that properly calculates the degree of employment-related permanent impairment to the leg under the fifth edition of the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision.

³ A.M.A., *Guides* (4th ed. 1995), 130, Table 83.

⁴ The Office medical adviser stated that Dr. Levi's recommendations took into account spine symptoms, but Table 83 is a method of determining lower extremity impairments based on spinal nerve root impairments.

⁵ FECA Bulletin No. 01-05, issued January 29, 2001.

⁶ Table 68, page 89 of the fourth edition is identical to Table 17-37 at page 552 of the fifth edition; Table 83 at page 130 of the fourth edition is similar to Table 15-18, at page 424, of the fifth edition of the *Guides*.

The decisions of the Office of Workers' Compensation Programs dated June 18, 2002 and August 1, 2001 are set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
December 24, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member