

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHARLES T. SPRAGUE and DEPARTMENT OF THE AIR FORCE, HIGH EXPLOSIVES RESEARCH & DEVELOPMENT FACILITY, EGLIN AIR FORCE BASE, FL

*Docket No. 02-2059; Submitted on the Record;  
Issued December 12, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to more than a 15 percent permanent loss to his left leg for which he received a schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim for a right hip strain, lumbar radiculopathy and a herniated nucleus pulposis at L4-5 and L5-S1. On February 6, 1992 appellant filed a claim for a schedule award.

On December 18, 2001 the functional capacity evaluator, John R. Warhol, evaluated appellant's condition at length.

In a note dated February 3, 2002, appellant's treating physician, Dr. Christopher R. Edwards, a Board-certified internist, stated that appellant reached maximum medical improvement on January 18, 2002, and that, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1994), appellant had an 18 percent permanent impairment to both legs.

In a note dated February 21, 2002, the district medical adviser stated that, based on the December 18, 2001 functional capacity evaluation and the A.M.A., *Guides* (5<sup>th</sup> ed. 2001), appellant's "20 percent [illegible] – motor," at L4, "20 percent of 34 = 7," and at L5, "20 percent of 37 = 7." He also stated that, under sensory, at L4, 20 percent of 5 equalled 1, and at L5, 20 percent of 5 equalled 1. He combined the totals he obtained 7, 7, 1, 1, to obtain a permanent partial impairment to appellant's left lower extremity of 15 percent.

On May 3, 2002 the Office issued a schedule award for a 15 percent permanent loss of use of the left leg. The Office found that the district medical adviser's opinion constituted the weight of the evidence because the district medical adviser explained his opinion whereas Dr. Edwards provided a rating without any measurements.

By letter dated July 11, 2002, appellant requested reconsideration of the Office's decision. He submitted additional evidence including a work status physician's report dated June 17, 2002 from the Atlanta Neurological Spine Institute indicating that appellant had an 18 percent permanent impairment and a letter from Dr. Edwards dated June 17, 2002 stating that the rating he gave appellant, *i.e.*, 18 percent, was "accurate and truly reflects" appellant's condition. Appellant submitted other medical records including progress notes dated January 4 through January 17, 2001, July 1 and July 2, 2002 and a follow-up report from Dr. Edwards dated June 17, 2002. Other evidence appellant submitted pertained to leave, personnel actions and the calculation of the amount of his award.

By decision dated July 19, 2002, the Office denied appellant's request for reconsideration.

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

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulations<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.<sup>3</sup>

In this case, the opinion of appellant's treating physician, Dr. Edwards, dated February 3, 2002, is not probative because he summarily stated that appellant had an 18 percent permanent impairment to both legs without describing the physical findings on which he relied in making this finding. He also failed to refer to specific tables and page numbers in the A.M.A., *Guides* (5<sup>th</sup> ed. 2001) in stating how he obtained the rating of 18 percent.<sup>4</sup> Evidence appellant submitted in his request for reconsideration did not cure the defect in Dr. Edwards' opinion. Dr. Edwards' opinion is therefore inadequate to establish that appellant had a permanent partial impairment rating.

The district medical adviser's opinion dated February 21, 2002 is also inadequate. While the district medical adviser referred generally to the December 18, 2001 functional capacity evaluation and presumably used the A.M.A., *Guides* (5<sup>th</sup> ed. 2001) in response to the Office's request, he did not state the specific findings he relied on in determining the extent of appellant's motor and sensory impairment at L4 and L5. He also did not indicate which tables or figures, with references to page numbers, of the A.M.A., *Guides* he used. It is not clear how he obtained

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<sup>1</sup> 5 U.S.C. § 8107 *et seq.*

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

<sup>4</sup> Use of the A.M.A., *Guides* (5<sup>th</sup> ed. 2001) became effective on February 1, 2001. *See* FECA Bulletin No. 01-05 (issued January 29, 2001).

his total of 15 percent, when the sum of the figures he obtained equalled 16 percent, although he appeared to have used the Combined Values Chart on page 604 of the A.M.A., *Guides*.

Since neither Dr. Edwards nor the district medical adviser adequately explained the physical findings on which they based their ratings nor made specific references to the A.M.A., *Guides* (5<sup>th</sup> ed. 2001), their opinions are of diminished probative value and preclude the Board's review of the Office's decision.<sup>5</sup> Moreover, while appellant has the burden to establish entitlement to compensation benefits, the Office shares the responsibility in the development of the evidence.<sup>6</sup> The case should therefore be remanded for the Office to obtain clarification from Dr. Edwards and the district medical adviser as to how they obtained their impairment ratings of 18 and 15 percent, respectively, with specific references to physical findings in the record and to figures or tables, with page numbers, of the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). On remand, after any further development it deems necessary, the Office should issue a *de novo* decision.

The July 19 and May 3, 2002 decisions of the Office of Workers' Compensation Programs are hereby set aside, and the case is remanded for further development consistent with this decision.

Dated, Washington, DC  
December 12, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>5</sup> See *James Kennedy, Jr.*, *supra* note 3 (1989).

<sup>6</sup> See *Lourdes Davila*, 45 ECAB 139, 143 (1993).