

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JEFFERY E. PARKS and U.S. POSTAL SERVICE,  
POST OFFICE, Aurora, IL

*Docket No. 02-2181; Submitted on the Record;  
Issued December 6, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

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

On October 29, 1988 appellant, then a 32-year-old carrier, filed a claim alleging that on October 17, 1988 he sustained lower back pain while in the performance of duty. The Office of Workers' Compensation Programs accepted lumbosacral strain and a permanent aggravation of degenerative disc disease at L4-5 and L5-S1. The Office subsequently authorized a discography and a laparoscopic anterior lumbar interbody fusion at L5.

Appellant then filed a claim for a schedule award.

In a report dated April 23, 1999, Dr. Giri T. Gireesan, appellant's treating physician and a Board-certified orthopedic surgeon, stated:

"Clinical examination today revealed that [appellant's] gait was normal. He was able to walk on his tiptoes as well as on his heels. Motor examination of the upper and lower extremities reveal five by five strength. Sensory examination was normal. Deep tendon reflexes were equal in the upper and lower extremities. Straight leg raising was negative bilaterally."

Dr. Gireesan also noted that an examination of the spine failed to reveal any deformity.

In a report dated September 9, 1999, he stated that appellant "lacks sufficient lumbosacral flexion, that he flexes forward to around 40 degrees and extension to around 10 degrees" and that "based on the lumbosacral category and loss of motion segment integrity, [appellant] qualifies for a 25 percent whole person impairment." Dr. Gireesan noted that he used the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1993) in his impairment rating.

In a report dated October 4, 1999, Dr. David H. Garelick, the Office medical adviser, reviewed Dr. Gireesan's reports as well as a functional capacity evaluation. He noted that the Federal Employees' Compensation Act<sup>1</sup> does not allow for a whole person impairment. Nonetheless, Dr. Garelick evaluated appellant's lower extremity radicular pain against the A.M.A., *Guides* and determined that appellant had a three percent impairment of each lower extremity. Dr. Garelick stated that appellant's date of maximum medical improvement was June 22, 1999.

In a report dated January 13, 2000, Dr. Gireesan clarified his September 9, 1999 report by finding that based on the A.M.A., *Guides*, (fourth edition 1993),<sup>2</sup> appellant had "about five percent [impairment] for each extremity because of the pain ... in both of the lower extremities." He added that appellant also had "severe pain, lower extremity and he was unable to walk for any length of time because of weakness in both of the lower extremities" and that this "will qualify him for 25 percent impairment in each extremity." He added:

"Regarding the deficits, 5 percent loss of function due to sensory deficit and pain plus 25 percent for each lower extremity for weakness. (sic) He should have 30 percent permanent impairment in each extremity."

In a report dated February 11, 2000, Dr. Leonard R. Smith, an Office consultant and a Board-certified orthopedic surgeon, stated that he had reviewed appellant's medical records consisting of a myelogram, magnetic resonance imaging (MRI) scan and a discogram, which revealed degenerative disc disease of L4-5 and L5-S1. He noted appellant's subjective symptomology of intermittent pain in the right leg, stiffness upon prolonged sitting and numbness in the right second toe. Dr. Smith stated x-rays taken that day revealed anterior interbody fusion at L4-5 with an apparent laminectomy at L5-S-1, a possible partial laminectomy at L4-5 and obliteration of disc space in L4-5 with some narrowing of disc space at L5-S1. He noted that appellant's gait was normal and he was able to walk with normal toe and heel configuration. Dr. Smith noted no muscle spasms or swelling and noted normal muscle tone and minimal atrophy. He reported that appellant's forward flexion of the lumbar spine was limited to 10 degrees out of an arc of 80 degrees, extension was limited to 5 degrees, lateral flexion was normal to 30 degrees, rotation was normal to 45 degrees and straight leg raising and sitting tests were normal. Dr. Smith noted some radiation of pain and some toe numbness. He reported equal reflexes bilaterally, full passive range of motion of both hips, Grade five muscle power in both extremities and equal circumference of both thighs and calves. Dr. Smith concluded that appellant had a severe case of degenerative disc disease at L4-5 and L5-S1, had reached maximum medical improvement and was able to return to full duty.

In a report dated March 13, 2000, Dr. Garelick, the Office medical adviser, noted that he had reviewed both Dr. Gireesan's and Dr. Smith's reports and determined that appellant had a three percent impairment of each lower extremity based on Grade three pain based on the A.M.A., *Guides*, (fourth edition 1993). He noted appellant's normal gait and his ability to walk

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> The Board notes that Dr. Gireesan's references to page 150, Table 83 and pages 47, Tables 11 and 12 to the A.M.A., *Guides* (4<sup>th</sup> ed. 1993) do not relate to the material contained on those pages. Table 11 appears on page 48.

about on his toes and heels without difficulty. Dr. Garelick noted appellant's limited lumbar range of motion as well as his normal supine and sitting straight leg raises. He noted normal and symmetric reflexes bilaterally and that appellant's strength had been graded at five by five. Dr. Garelick noted that although Dr. Gireesan recommended a 25 percent bilateral lower extremity impairment for weakness, he also reported appellant's 5 by 5 strength and his capacity to walk on his toes and heels without difficulty.

The Office, in a decision dated May 25, 2000, awarded appellant a three percent impairment of the right lower extremity and a three percent impairment of the left lower extremity.

Subsequent to the Office's decision, appellant submitted a December 6, 2000 report from Dr. Gireesan, which repeated his April 23, 1999 report. He stated that appellant had a normal gait, that he was able to walk on his tiptoes and heels, that his motor examination revealed five by five strength. Dr. Gireesan also noted a normal sensory examination, normal and equal deep tendon reflexes and a negative bilateral straight leg raising. He stated that appellant's spine examination was normal, that lumbosacral flexion was possible to 45 degrees and that his extension reached to around 10 degrees. Dr. Gireesan also noted that appellant was gainfully employed and that he had an excellent recovery.

In a letter dated April 15, 2002, appellant, through counsel, requested reconsideration.

In support of his request, appellant submitted a January 13, 2002 report from Dr. Gireesan. In that report, Dr. Gireesan stated that appellant was entitled to a five percent impairment increase for each extremity because of pain in each extremity, "especially in the L5 distribution." He also noted that appellant was unable to walk for any length of time due to weakness in his extremities and that he had "severe back pain, lower extremity." He found a 25 percent impairment for each extremity and an additional 5 percent impairment due to sensory deficit and pain for a total of 30 percent impairment for each extremity.<sup>3</sup>

In a report dated July 1, 2002, the Office medical adviser reviewed appellant's medical evidence and stated that there was insufficient medical data to support an increase in appellant's schedule award of three percent for his right lower extremity and three percent for his left lower extremity.

In a decision dated July 10, 2002, the Office denied modification of its prior decision awarding appellant three percent impairment of the right lower extremity and three percent of the left lower extremity.

The Board finds that appellant has no more than a three percent impairment of each lower extremity for which he received a schedule award.

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<sup>3</sup> The Board notes that Dr. Gireesan's January 13, 2002 report is identical to his January 13, 2000 report.

The schedule award provision of the Act<sup>4</sup> and its implementing regulation<sup>5</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>6</sup>

In the present case, Dr. Gireesan, appellant's treating physician, determined that appellant had a 30 percent impairment of the right lower extremity and a 30 percent impairment of the left lower extremity. The Board notes that Dr. Gireesan's reports include contradictory evaluations, which undermine their probative value. In his January 13, 2000 and January 13, 2002 reports, he noted that appellant was unable to walk for any length of time because of weakness in both extremities. On the other hand, in his April 23, 1999 and December 6, 2000 reports, Dr. Gireesan noted that appellant had a normal gait and could walk on his heels and toes. He also noted that appellant had an excellent recovery and was gainfully employed. Dr. Gireesan also noted that appellant's strength was rated at five by five, but stated in his January 2000 and 2002 reports that he was unable to walk due to weakness. Furthermore, Dr. Gireesan failed to support his rating determinations made in those reports with correct references to the A.M.A., *Guides*. Dr. Garelick, the Office medical adviser and a Board-certified orthopedic surgeon, in a March 13, 2000 report, found that appellant had a three percent impairment of his right lower extremity and his left lower extremity. Dr. Garelick justified his finding based on Dr. Gireesan's evaluation and referencing that data to specific and appropriate provisions of the A.M.A., *Guides*. He evaluated appellant's lower extremity radicular pain against the standards as set out in the fourth edition of the A.M.A., *Guides*, noting that in accordance with Table 83, page 130 and page 43, Table 11,<sup>7</sup> appellant had a three percent impairment of the right lower extremity and left lower extremity. As the Office medical adviser's determination of appellant's impairment is the only medical evidence, which complies with the A.M.A., *Guides*, the Office properly based its schedule award decision on the medical adviser's evaluation. There is no medical evidence of record, correctly based on the A.M.A., *Guides*, which establishes that appellant has a greater than three percent impairment of the right lower extremity or the left lower extremity.

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404 (1999).

<sup>6</sup> *Id.*

<sup>7</sup> A.M.A., *Guides*, 83, Table 130, 43, Table 11.

The July 10, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
December 6, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member