

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARENCE L. WILLIAMS and U.S. POSTAL SERVICE,
BROADVIEW STATION, Atlanta, GA

*Docket No. 01-875; Submitted on the Record;
Issued July 3, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has greater than a 16 percent permanent loss of use of his right leg.

The Office of Workers' Compensation Programs accepted that appellant sustained a right hip strain and a herniated disc in an injury sustained on October 5, 1995 when a tree fell on his truck.

On October 16, 1999 appellant filed a claim for a schedule award. He submitted a schedule award evaluation dated October 23, 1999 from his attending physician, Dr. Ralph D'Auria, a Board-certified physiatrist, indicating that appellant had a 16 percent loss of use of the right leg due to loss of function from sensory deficit, pain and decreased strength.

In a report dated October 28, 1999, Dr. Alexander N. Doman, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion evaluation, concluded that appellant's current condition was not causally related to his October 5, 1995 employment injury on the basis that a magnetic resonance imaging scan done on October 28, 1999 showed that his herniated disc had resolved. Dr. Doman stated that the aggravation of appellant's underlying degenerative disc disease had also resolved and that appellant had no continuing impairment from his October 5, 1995 employment injury.

To resolve the conflict of medical opinion between Drs. D'Auria and Doman, the Office, pursuant to section 8123(a) of the Federal Employees' Compensation Act,¹ referred appellant, the case record and a statement of accepted facts to Dr. Christine D.V. Indech, a Board-certified orthopedic surgeon. In a report dated May 31, 2000, Dr. Indech stated: "The assessment at this time is that the individual does have a residual from his injury of 1995, although he may well

¹ 5 U.S.C. § 8123(a) states in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

have had some degenerative lumbar disc disease previous to this injury. However, the injury clearly aggravated the back, as well as causing some radiculopathy that has not remitted over time.” With regard to a permanent impairment of appellant’s right leg, Dr. Indech stated:

“An impairment rating to the leg alone would be based on mild weakness, sensory changes and muscular atrophy and would be in the area of 15 percent of the limb. Impairment should be 15 percent of the limb based on changes in muscle strength to Grade 4+ over 5 of the motors of plantar flexion and dorsiflexion. ... Absent documentation of previous weakness, sensory alteration or muscular atrophy, this would be considered as related to his event.”

Based on Dr. Indech’s report, the Office accepted the condition of permanent aggravation of degenerative disc disease.

On September 28, 2000 an Office medical adviser reviewed the medical evidence and stated: “[Appellant] has 15 percent permanent partial impairment of the right lower extremity due to weakness from the [right] L5 and S1 nerve roots, per Tables 83 and 12.”

An Office memorandum dated November 27, 2000 noted that appellant’s attending physician indicated a 16 percent permanent impairment and the impartial medical specialist indicated 15 percent; the memorandum recommended giving appellant the benefit of the doubt and issuing a schedule award for a 16 percent permanent impairment.

By decision dated November 29, 2000, the Office issued appellant a schedule award for a 16 percent permanent impairment of his right leg.

The Board finds that the evidence does not establish that appellant has greater than a 16 percent permanent impairment of his right leg.

The schedule award provisions of the Act² sets 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. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

Appellant’s attending physician, Dr. D’Auria, indicated that appellant had a 16 percent permanent impairment of his right leg. Dr. Indech, an impartial medical specialist resolving a conflict of medical opinion regarding continuing causal relation, indicated appellant had a 15 percent permanent impairment of the right leg. An Office medical adviser reviewed Dr. Indech’s report and concluded that it showed a 15 percent permanent loss of use of the right leg. There is no medical evidence that appellant has greater than the 16 percent permanent loss of use of the right leg awarded by the Office.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

The November 29, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
July 3, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member