

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID A. HAMPTON and U.S. POSTAL SERVICE,
MARKET SQUARE STATION, Philadelphia, PA

*Docket No. 02-1366; Submitted on the Record;
Issued October 11, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant is entitled to more than a 22 percent permanent impairment of his right leg, for which he received a schedule award.

The Board has duly reviewed this case and finds that appellant has no greater than a 22 percent impairment of his right leg, for which he received a schedule award.

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 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)³ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, appellant's claim was accepted for a cervical strain, a herniated disc at L4-5 and a lumbar laminectomy. On June 22, 2001 he filed a claim for a schedule award. By letter to appellant dated July 16, 2001, the Office of Workers' Compensation Programs

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* (5th ed. 2001).

requested that he provide further information from his physician. In a medical report dated August 10, 2001, appellant's Board-certified internist, Dr. John Butler, responded as follows:

“As noted in previous communications, [appellant] has had chronic back pain following an injury at work on the above noted date. He has had multiple bouts of physical therapy and follow-up treatments but has really reached a maximum level of improvement and at this point is maintained on chronic analgesics. He has been able to get back to work on a limited capacity with ‘light duty.’ Please see the enclosed functional capacity evaluation that further explains and quantifies his limitations. I would estimate that his functional level is about 25 [percent] of normal with regards to his work duties.”

Attached to Dr. Butler's report was an evaluation by a physical therapist dated September 20, 2000. In this report, the physical therapist evaluated appellant and noted that objectively, he was in minimal distress. She noted:

“[Appellant] continues with considerable low back pain and right lower extremity pain which is irritated and increased with prolonged sitting, prolonged standing, bending and lifting. At this time the patient's physical demand level of work would be sedentary to light. [Appellant] would be able to return to work if his job specifications met a sedentary level in reference to lifting. The patient's sitting criteria would be no greater than 20 minutes at a time with breaks in between. The patient is able to drive and his sitting would be limited to 20 to 30 minutes and then he would need a break. The patient would be able to walk short distances and then would need to be able to rest. [Appellant] could not carry any heavy objects. The patient's validity criteria at this time showed that the patient is performing at maximum effort and that this is a valid test.”

The physical therapist noted that appellant continued to be in a “physical demand classification of work as sedentary to light.”

The Office requested that the Office medical adviser “advise if claimant was entitled to a schedule award and if so, what was his date of maximum medical improvement and percentage of loss of use of the extremities, since the case is approved for a back condition and there is no [schedule award] for the back.” The Office medical adviser replied that the medical evidence supported radiculopathy into the right leg, with the L4-5 root affected. The Office medical adviser then evaluated appellant under the criteria set forth in the 5th edition of the A.M.A., *Guides* by noting that pursuant to Table 15-18, the maximum for loss of motor functions for the L5 nerve root is 37 percent and the maximum for sensory loss is 5 percent. It is apparent that he utilized Table 15-16 and determined that appellant's impairment due to loss of power and motor deficits was a Grade 3. Utilizing the upper value for a Grade 3 impairment of 50 percent, he multiplied this by the 37 percent maximum loss and arrived at a Figure of 18.5 percent, which he rounded up to 19 percent. With regard to sensory loss, it is apparent that he utilized Table 15-15 when he noted that as appellant had pain that may prevent some activity, appellant should be evaluated at Grade 2, which indicated a maximum sensory deficit of 80 percent. By multiplying 80 percent times the 5 percent maximum loss of function due to sensory deficit or pain, he arrived at four percent. Utilizing the table of combined values, he combined 19 percent and four

percent to yield a 22 percent impairment of the right leg. He also noted that appellant's date of maximum medical improvement was August 20, 2001, pursuant to the report of Dr. Butler. As the Office medical adviser properly applied the A.M.A., *Guides* to determine that appellant had a 22 percent impairment of the right leg and there is no evidence of record that appellant had more than a 22 percent impairment of the right leg, the Office properly granted a schedule award for a 22 percent impairment of the right leg.

The October 26, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 11, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member