

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN G. FLEMING and U.S. POSTAL SERVICE,
MEMPHIS BULK MAIL CENTER, Memphis, TN

*Docket No. 02-1022; Submitted on the Record;
Issued September 5, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to more than a five percent impairment of each lower extremity for which she received a schedule award.

The Board has reviewed the record and finds that appellant has no more than a five percent permanent impairment of each lower extremity.

The schedule award provision 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* has been adopted by the Office of Workers' Compensation Programs as the implementing regulation as the appropriate standard for evaluating schedule losses. Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is utilized to calculate any awards.³

Appellant, then a 44-year-old postal clerk, injured her lower back on March 17, 1994 while lifting a tray of mail. The Office accepted the claim for a lumbar sprain and disc displacement at L4-5.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ FECA Bulletin No. 01-05 (issued January 29, 2001).

On February 23, 2001 appellant filed a Form CA-7 claim for a schedule award. In support of her claim, Dr. Moacir Schnapp, appellant's treating neurologist, reported that on April 23, 2001 appellant had recently undergone a functional capacity assessment which revealed that she is quite limited in her ability to perform physical labor. Dr. Schnapp stated that according to the A.M.A., *Guides* appellant has a 10 percent permanent physical impairment to the body as a whole.

By letter dated May 16, 2001, the Office asked Dr. Schnapp to determine whether appellant has any permanent impairment of her lower extremities due to her accepted back conditions and provided Dr. Schnapp with a form to be completed.⁴ On his completed response form received by the Office on June 11, 2001, Dr. Schnapp indicated that appellant had reached maximum medical improvement on April 23, 2001 and noted that the L4-5 nerve root was the region affected by her accepted injury. He further noted that appellant had a total of 10 percent permanent impairment for her back and lower extremities, including a diagnosis-related estimate, lumbar category II impairment and sciatica.

In a treatment note dated June 6, 2001, Dr. Schnapp stated that appellant reported having quite a bit of pain in her back and generalized and was scheduled to have a left knee replacement in one month in order to relieve her out of control leg pain.⁵ He noted that appellant walked with difficulty, limping substantially on the left and that there were arthritic changes in both knees, left worse than right. Dr. Schnapp further noted that appellant had tenderness over the sacroiliac with positive facet maneuvers. He diagnosed degenerative disc and joint disease with lumbar facet arthropathy-sacroiliitis, generalized osteoarthritis, morbid obesity, lumbar spondylosis and moderate depression.

On September 18, 2001 an Office medical adviser reviewed the medical record at the request of the Office. The Office medical examiner noted that appellant was markedly obese, weighing 340 pounds and that her significant impairment was her severe pain. He noted that pursuant to the A.M.A., *Guides*, fifth edition, Table 16-70, page 482, her pain could be classified as Grade 3 or distorted superficial tactile sensibility with some abnormal sensations or slight pain that interferes with some activities. Within the allowable range of 26 to 60 percent, the Office medical adviser estimated appellant's degree of sensory impairment to be 30 percent. The Office medical adviser found that the nerve involved was the sciatic nerve for which there is a maximum lower extremity sensory impairment of 17 percent, as set forth in Table 17-37, page 552 of the A.M.A., *Guides*. Applying the calculation procedures contained in Table 16-10, page 482, the Office medical adviser multiplied the 30 percent grade by the 17 percent maximum to arrive at 5.1 percent which was rounded down to 5 percent. The Office medical adviser concluded that appellant had a five percent permanent impairment of each lower extremity resulting from her accepted work-related back conditions.

⁴ The Act specifically excludes the back as an organ and, therefore, the back does not come under the provisions for payment of a schedule award. *Francesco C. Veneziani*, 48 ECAB 572 (1997). However, while a schedule award is not payable under the Act for an impairment of the back, a schedule award is payable for a permanent impairment of the legs that is due to a work-related back condition. *Denise D. Cason*, 48 ECAB 530 (1997).

⁵ Appellant's bilateral knee complaints are nonemployment related.

By decision dated October 17, 2001, the Office issued a schedule award for five percent impairment of each leg due to the work-related condition.

In this case, Dr. Schnapp based his schedule award calculation on appellant's limitation of the spine and lower extremities. However, Office procedure only allows schedule awards for nerve root impairment associated with the lower extremity. Further, Dr. Schnapp reported a 10 percent impairment of the spine and lower extremities was given as an impairment of the whole person. While the A.M.A., *Guides* provide for both impairment to the individual member and to the whole person, the Act does not provide for permanent impairment for the whole person.⁶ The Office medical adviser properly used the appropriate table of the fifth edition of the A.M.A., *Guides* to conclude that appellant had five percent impairment of each leg.

When the treating physician does not properly use the A.M.A., *Guides* in determining permanent impairment, it is appropriate for the Office medical adviser to apply the A.M.A., *Guides* to the findings presented by the treating physician.⁷ As the Office medical adviser's report is the only evaluation that conforms to Office procedures and contains specific references to the correct edition of the A.M.A., *Guides*, it constitutes the weight of the medical evidence.

The October 17, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 5, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ *John Yera*, 48 ECAB 243 (1996).

⁷ *See Lena P. Huntley*, 46 ECAB 643 (1995).