

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALFRED WORRELL and U.S. POSTAL SERVICE,  
SWEDESBORO POST OFFICE, Swedesboro, NJ

*Docket No. 03-302; Submitted on the Record;  
Issued April 7, 2003*

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DECISION and ORDER

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

The issue is whether appellant has more than a 12 percent permanent impairment of the right leg.

On January 15, 1999 appellant, then a 51-year-old letter carrier, slipped on ice and fell while delivering mail, injuring his lower back. On February 16, 1999 appellant was shoving a tray of mail into the back of his postal vehicle when the tray hit an inspection plate, jarring appellant's lower back and causing increasing pain.

Appellant stopped working on February 17, 1999 and returned to light-duty work on March 10, 1999 for four hours a day. He received continuation of pay for the period he did not work through April 3, 1999. In an April 9, 1999 letter, the Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain. Appellant subsequently returned to work eight hours a day.

On November 19, 1999 appellant underwent arthroscopic surgery for posterolateral extradural disc decompression at L4-5 on the right. Dr. Evan O'Brien, a Board-certified orthopedic surgeon, who performed the surgery, indicated that a preoperative magnetic resonance imaging (MRI) scan showed a right far lateral herniation at L4-5 which was contacting the right exiting L4 nerve root. Appellant filed a claim for a schedule award on September 27, 2000.

Dr. David Weiss, an osteopath, examined appellant, reviewed the prior medical reports and found that appellant had reached maximum medical improvement on August 17, 2000. He determined, based on neurological testing, that appellant had a "perceived sensory hypesthesia over the L4, L5 and S1 dermatomes involving the right lower extremity. The motor strength testing revealed a grade of 4+/5 involving the right lower extremity. The deep tendon reflexes are diminished over the right Achilles. Hip flexors are graded a 4+/5 on the right." Based on these findings, Dr. Weiss found a four percent impairment to each of the L4, L5 and S1 nerve roots and eight percent impairment due to the motor strength deficit (4/5) of the right hip flexor.

Dr. Weiss calculated this to reflect a 19 percent permanent impairment of the right lower extremity.<sup>1</sup>

In a December 1, 2000 memorandum, the Office medical adviser indicated that he agreed with Dr Weiss' analysis for the sensory deficit for the right L4, L5 and S1 nerve roots. He stated that the right hip flexor was not related to L4, L5 or S1 nerve roots. He indicated that the hip flexor was innervated by L1, L2 and L3 nerve roots via the femoral nerve to the iliopsoas. He therefore concluded that appellant had a 4 percent permanent impairment apiece for the L4, L5 and S1 nerve roots for a total permanent impairment of 12 percent.

On January 23, 2001 the Office issued a schedule award for a 12 percent permanent impairment of the right leg. Appellant requested a hearing before an Office hearing representative. He submitted an April 12, 2001 report from Dr. David M. Glick, an osteopath, who reported that a somatosensory evoked potential study showed slowed responses in the sural nerve, extending from the S1 nerve root and the subcostal nerve extending from the T12 nerve root. He noted that appellant had pain and tenderness over the T12-S1 region. He diagnosed right T12 and S1 radiculitis, likely contributing to a thoracolumbar junction syndrome with right-sided sacroilitis.

The hearing was conducted on June 28, 2001. In a September 20, 2001 decision, the Office hearing representative affirmed the Office's January 23, 2001 decision.

The Board finds that appellant has a 12 percent permanent impairment of the right leg.<sup>2</sup>

The schedule award provisions of the Federal Employees' Compensation Act<sup>3</sup> and its implementing regulation<sup>4</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>5</sup>

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<sup>1</sup> Dr. Weiss' calculations were based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, pages 48, 130, Tables 11, 83 (4<sup>th</sup> ed. 1993). Although Dr. Weiss added the deficits for the right lower extremity incorrectly, (should be 20 percent), this is harmless error in light of the disposition of this case.

<sup>2</sup> The Board notes that this case was appealed previously but appellant's attorney cited to different Office file numbers which led to the wrong case record being sent to the Board. The Board therefore dismissed appellant's first appeal and allowed the appeal in the case to be refiled so that the correct case record could be obtained. Docket No. 02-534, Order Dismissing Appeal (issued November 18, 2002).

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> As this case was decided before February 1, 2001, when the Office adopted the fifth edition of the A.M.A., *Guides* for schedule award calculations, the decision will be based on the fourth edition of the A.M.A., *Guides*. FECA Bulletin 01-05 (issued January 29, 2001).

Dr. Weiss and the Office medical adviser agreed on the permanent impairment calculations for the L4, L5 and S1 nerve roots. The only difference was on the loss of strength in the right hip flexor. Dr. Weiss related appellant's condition to his employment injuries. The Office medical adviser, on the other hand, stated that the hip flexor was affected by the L1, L2 and L3 nerve roots and therefore was not related to the employment injuries. Prior medical reports in the record showed that appellant had a T12-L1 disc herniation pressing on the nerve root, which was seen in a prior study and a small L1-2 disc herniation. An MRI showed that the T12-S1 disc herniation preexisted the employment injuries. Therefore, any effects on appellant's motor strength in the hip flexor, extending from that herniation, was not related to the employment injury but came from a preexisting condition. There is no evidence that the L1-2 herniation compromised appellant's nerve roots at that level. Appellant has not shown that the employment injuries affected the L1, L2 or L3 nerve roots which would in turn affect the hip flexor. The medical evidence only establishes that the L4, L5 and S1 nerve roots were affected by the employment injuries. Therefore, appellant only has established that he is entitled to a 12 percent permanent impairment of the right leg.

The decision of the Office of Workers' Compensation Programs, dated September 20, 2001, is hereby affirmed.

Dated, Washington, DC  
April 7, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member