

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LAURETTA A. WALLACE and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Jackson, NJ

*Docket No. 03-326; Submitted on the Record;  
Issued August 28, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has more than an eight percent impairment of her left lower extremity, for which she received a schedule award.

On January 3, 1992 appellant, then a 54-year old clerk, filed a notice of traumatic injury (Form CA-1), alleging that, due to long standing and lifting, she sustained an injury to her left leg. On January 6, 1992 appellant filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she sustained degenerative arthritis as a result of the long standing and lifting related to her federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for low back strain.

Appellant subsequently filed a claim for a schedule award. The Office referred appellant to Dr. Thomas Bills, a Board-certified orthopedic surgeon, for evaluation. In a medical report dated December 13, 1996, Dr. Bills stated: "It is my impression that she has a chronic herniated nucleous pulposis (sic) with a chronic lumbar radiculopathy." He rated appellant's impairments as 10 percent based on her chronic back pain and her radicular symptoms. Dr. Bills also noted that it was possible that appellant could improve, either with surgery or with an aggressive work hardening program.

The Office issued a May 15, 1998 decision denying the claim for a schedule award as maximum medical improvement had not been obtained. However, on September 8, 1998 an Office hearing representative set this decision aside and remanded the case for further development of the record and a determination concerning any permanent impairment of appellant's left lower extremity. On remand the Office set an appointment with Dr. Irving Strouse, a Board-certified orthopedic surgeon. However, appellant failed to appear for the examination, and by decision dated December 28, 1998, the Office found that appellant was not entitled to a schedule award because she failed to attend the examination. By order dated July 20, 2001, the Board remanded the case to the Office, finding that it improperly rejected

appellant's claim for a schedule award.<sup>1</sup> The case was remanded for further development to be followed by a *de novo* decision on appellant's entitlement to a schedule award.

At the request of appellant's attorney, appellant was examined by Dr. Ronald John Potash, a Board-certified surgeon. In a medical report dated September 26, 1999, Dr. Potash diagnosed appellant with acute lumbosacral strain and sprain with chronic myositis and herniated nucleus pulposus L3-4 with clinical radiculopathy. Dr. Potash noted that appellant complained of lumbar pain and stiffness daily, with episodes of severe low back pain. He noted that appellant ambulated with an antalgic gait, and exhibited a left lower extremity limp. Dr. Potash noted objective factors with regard to the lumbar spine, and noted that all ranges of motion were carried through with pain at the extremes reached. He stated that the neurological examination was decreased on the left involving the L4 and L5 dermatomes, and that the deep tendon reflexes were negative involving the bilateral Achilles reflexes. Dr. Potash then applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed.), as follows:

“For the sensory deficit left L4 nerve root = 4%<sup>2</sup>

“For the sensory deficit left L5 nerve root = 4%<sup>3</sup>

“For the 3/5 left motor strength deficit great toe ext. = 7%<sup>4</sup>

“Combined total left extremity = 15%”

On October 25, 2001 an Office medical adviser noted that nerve injury and strength findings are not combined under the A.M.A., *Guides* (5<sup>th</sup> edition).<sup>5</sup> He further noted that, as sensory deficits of the L4 and L5 were subjective, two examinations were recommended.<sup>6</sup> He therefore concluded that it was best to base the award on great toe motion and award appellant “seven percent.”<sup>7</sup>

The Office, by award of compensation dated November 2, 2001, granted appellant a schedule award for a seven percent impairment of his left great toe. The period of the award ran from September 21 to October 9, 1999. Appellant requested a hearing, which was held on May 15, 2002.

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<sup>1</sup> Docket No. 00-1926 (issued July 20, 2001).

<sup>2</sup> A.M.A., *Guides* (4<sup>th</sup> ed.) at 130, Table 82; 48, Table 11.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 77, page 39.

<sup>5</sup> A.M.A., *Guides* (5<sup>th</sup> ed.) at 526, Table 17-2.

<sup>6</sup> *Id.* at 552, Table 17-37.

<sup>7</sup> *Id.* at 532, Table 17-8.

By decision dated July 31, 2002, the hearing representative found that appellant sustained an eight percent impairment of the left lower extremity. The hearing representative noted that the Office medical adviser properly applied the fifth edition of the A.M.A., *Guides* when he determined that impairments for nerve injury and muscle strength were not to be combined in determining permanent impairment of the lower extremity. The hearing representative noted, however, that when there are two alternate methods for computing permanent impairment, the method providing the higher percentage should be used. He found that appellant should be awarded a schedule award based on Dr. Potash's finding of eight percent impairment for sensory deficit rather than the lower seven percent impairment for motor strength. The hearing representative noted that there were two examiners, Dr. Bills and Dr. Potash, who indicated that appellant had impairment due to sensory deficit based on her radicular symptoms. Accordingly, the hearing representative modified the November 2, 2001 decision to find that appellant had an eight percent impairment of the left lower extremity. He noted that there was no conflict of medical opinion between Dr. Potash and the Office medical adviser because Dr. Potash had not properly applied the A.M.A., *Guides*.

By decision dated August 20, 2002, the Office issued a schedule award for an eight percent impairment of appellant's left lower extremity. The period of the award ran from October 10, 1999 to February 29, 2000, less the amount previously paid.

The Board finds that appellant has no greater than an eight percent impairment to her left lower extremity.

Section 8107 of the Federal Employees' Compensation Act<sup>8</sup> sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Act's implementing regulation has adopted the A.M.A., *Guides*, as the appropriate standard for evaluating schedule losses.<sup>9</sup>

The Office began using the fifth edition of the A.M.A., *Guides* for all awards issued after February 1, 2001, including those recalculated as a result of hearings or reconsiderations.<sup>10</sup> In the instant case, Dr. Potash reviewed appellant's claim by utilizing the fourth edition of the A.M.A., *Guides*, whereas the Office medical adviser applied the tables of the updated fifth edition of the A.M.A., *Guides* to conclude that appellant had an eight percent impairment to her left lower extremity. The Office medical adviser properly noted that although Dr. Potash combined nerve injury and strength in arriving at his conclusion, these are not combined according to the fifth edition of the A.M.A., *Guides*. He noted that although Dr. Potash noted a sensory deficit in L4 and L5, as these findings were subjective, two examinations were recommended pursuant to the fifth edition of the A.M.A., *Guides*. He further noted that

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<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> 20 C.F.R. § 10.404 (1999).

<sup>10</sup> FECA Bulletin No. 01-05 (issued January 29, 2001).

appellant received the greatest impairment rating if one considered appellant's motor strength deficit for great toe extension.<sup>11</sup> The Office medical adviser then recommended a finding of eight percent impairment for sensory deficit to the left lower extremity according to the protocols of the fifth edition of the A.M.A., *Guides*. The weight of evidence does not establish greater impairment.

The decisions of the Office of Workers' Compensation Programs dated August 20 and July 31, 2002 are hereby affirmed.

Dated, Washington, DC  
August 28, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> See *id.* at 532, Table 17-8.