

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KENNETH M. WEHR and U.S. POSTAL SERVICE,  
POST OFFICE, Minneapolis, MN

*Docket No. 03-1948; Submitted on the Record;  
Issued December 31, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant sustained greater than a one percent impairment to his right lower extremity.

On February 12, 1987 appellant, then a 27-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on February 11, 1987, as a result of a slip and fall during the course of his federal employment, he sustained an injury to his back. Appellant's claim was accepted for lumbar and thoracic strain, herniated disc at L4-5 and laminectomy.

On May 3, 2002 appellant filed a claim for a schedule award and submitted a September 16, 2002 report by Dr. Elmer R. Salovich, his treating Board-certified orthopedic surgeon, who stated:

“Physical examination revealed reduced superficial sensation over the dorsomedial aspect of his right great toe and the lateral aspect of his left foot and tibia. The left ankle reflex was absent. He has minimal weakness of plantar flexion of both of his feet. He had a 20 percent decrease in the overall range of motion of his lumbosacral spine. There was tenderness to percussion of the lumbosacral spine. The patient's diagnosis is degenerative dis[c] disease of the L4-5 and L5-S1 interspaces. It is my opinion that [appellant] has a 13 percent permanent partial disability of the whole body. This is based on signs of radiculopathy, including pain in a dermatomal distribution, sensory loss, loss of reflex and weakness.”

By letter dated January 9, 2003, the Office of Workers' Compensation Programs requested that Dr. Salovich answer questions with regard to appellant's condition. In a response dated January 31, 2003, Dr. Salovich indicated that appellant reached maximum medical improvement on September 16, 2002. He indicated that the nerve root affected was L5-S1, on the left, and that appellant had moderate to severe pain. In response to the grade of weakness or

atrophy, Dr. Salovich checked Grade 4, described as “active movement against gravity with some resistance.”

The Office referred appellant’s file to an Office medical adviser for a determination of impairment. The Office medical adviser stated:

“[Appellant] continues to complain [of] low back pain and primarily left leg pain. Physical examination revealed slight weakness of dorsiflexion of the right great toe and foot awarding six percent RLE PPI [right lower extremity permanent partial impairment] for [G]rade 4+/5 strength in the distribution of the right L5 nerve root according to [T]able 15-17, p[age] 424 combined with [T]able 16-11, p[age] 484 of the A.M.A., [American Medical Association] *Guides to the Evaluation of Permanent Impairment*, fifth edition. There was decreased sensation to pinprick in the L5 dermatome awarding an additional one percent RLE PPI for [G]rade 4 sensory deficit in the distribution of the right L5 nerve root according to [T]able 15-17, p[age] 424 combined with [T]able 16-10, p[age] 482 of the A.M.A., *Guide[s]*.

“Dr. Salovich’s detailed analysis of [appellant’s] complicated situation is very helpful, but unfortunately relates PPI to the person as a whole. The [F]ederal [E]mployees’ [C]ompensation [A]ct (FECA) does not allow for impairment of the axial skeleton, or of the person as a whole -- only of the extremities. Therefore, using the [C]ombined [V]alues [Chart] on p[age] 604 of the A.M.A., *Guide[s]*, seven percent RLE PPI is awarded Date of MMI [maximum medical improvement] is estimated to have occurred as of January 28, 1997, approximately one year postoperative.”

“Right lower extremity PPI = one percent.

“Date of MMI = January 28, 1997.”

By decision dated April 2, 2003, the Office issued a schedule award for a one percent impairment of the right lower extremity.

The Board finds that this case is not in posture for decision.

The schedule award provisions of the Act<sup>1</sup> and its implementing regulation,<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs 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

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>3</sup>

In the instant case, the only physician to specifically apply the A.M.A., *Guides* to determine appellant's impairment to his right lower extremity was the Office medical adviser.<sup>4</sup> However, his opinion appears internally inconsistent. The Office medical adviser indicated that appellant had a six percent impairment of the right lower extremity for [G]rade 4+/5 strength in distribution of the right L5 nerve root, and an additional one percent impairment due to decreased sensation to pinprick in the L5 dermatome. Then, utilizing the Combined Values Chart of the A.M.A., *Guides*, the Office medical adviser indicated that appellant had a seven percent impairment of his right lower extremity. In summation, he indicated that appellant had an impairment of one percent of the right lower extremity. These conclusions appear inconsistent. It appears that the award of benefits was based on typographical error. Due to the inconsistencies in this case, it will be remanded to provide the Office medical adviser an opportunity to clarify his report.

The decision of the Office of Workers' Compensation Programs dated April 2, 2003 is hereby vacated and this case is remanded for further consideration consistent with this decision.

Dated, Washington, DC  
December 31, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>3</sup> See 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> Appellant's attending physician indicated appellant had a 13 percent impairment to the whole body, but a schedule award is not payable under the Act for an impairment to the back or to the body as a whole. *Rozella L. Skinner*, 37 ECAB 398 (1975).