

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERIC W. CHARLESTON and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 03-1997; Submitted on the Record;
Issued January 13, 2004*

DECISION and ORDER

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

The issue is whether appellant has established that he has greater than a one percent permanent impairment of the left lower extremity, for which he received a schedule award.

On June 21, 1999 appellant, a 39-year-old letter carrier, filed a claim for benefits, claiming that he developed a neck condition causally related to factors of his employment. The Office of Workers' Compensation Programs accepted the claim for cervical strain, aggravation of cervical spondylosis, herniated disc at L5-S1.

On March 7, 2002 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his left lower extremity. In a report dated March 7, 2002, Dr. David L. Wilkinson, a specialist in neurosurgery and appellant's treating physician, found that appellant had a 16 percent impairment due to his lumbar disc disease, which he described as his "usual rating for lumbar disc disease." In an April 17, 2002 report, Dr. Wilkinson stated that appellant had a 15 percent impairment due to cervical spine disorder.

The Office referred appellant for an examination and impairment evaluation with Dr. John A. Gragnani, Board-certified in physical medicine and rehabilitation. In a report dated June 24, 2002, Dr. Gragnani found that appellant had a one percent impairment of the left lower extremity. He noted that appellant had a lot of subjective complaints but no objective documentation of a specific motor or sensory loss. Dr. Gragnani stated:

"At this time, this gentleman has a lot of subjective complaints, none of which can be entirely confirmed with the exception of a pattern of some sensory change in the left L5 nerve root distribution. The pattern in the cervical area is too diffuse for specific localization. There is a report in the records of a C7 denervation in the left side. This was on electromyogram [EMG] study. Otherwise, there is no objective documentation at this time of a specific motor or sensory loss. Given this circumstance, using Chapter 15 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) [the A.M.A., *Guides*],

Table 15-15, a rating for the left lower extremity is offered at this time based on impairment due to sensory loss. This would be Grade IV with 25 percent sensory deficit for the L5 nerve root from Table 15-18, which is 5 percent, yielding a sensory impairment of 1.25 percent rounded to 1 percent.¹ There is no motor loss from Table 15-16 for the lower extremity. Therefore, the impairment for the left lower extremity is one percent. There was no documentation of a specific nerve root lesion other than from the EMG report of C7 denervation and muscle strength in the left upper extremity is 5/5. On clinical examination, this examiner found no specific sensory or motor pattern on which to base a rating for the left upper extremity due to cervical involvement. Therefore, no rating for the cervical complaints as they relate to the left upper extremity can be offered. Therefore, the only rating offered at this time is 1 percent for left lower extremity with a sensory change in the L5 distribution as noted.”

In a memorandum/impairment evaluation dated July 15, 2002, an Office medical adviser reviewed Dr. Gragnani’s findings and conclusions and determined that appellant had a one percent permanent impairment for loss of use of the left lower extremity. On July 23, 2002 the Office granted appellant a schedule award for a 1 percent permanent impairment of the left lower extremity for the period January 31 to February 20, 2002, for a total of 2.88 weeks of compensation. By letter dated July 26, 2002, appellant requested an oral hearing, which was held on February 26, 2003.

By decision dated May 19, 2003, an Office hearing representative affirmed the Office’s July 23, 2002 decision.

The Board finds that appellant has no more than a one percent permanent impairment of the left lower extremity, for which he received a schedule award.

The schedule award provisions of the Federal Employees’ Compensation Act² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.⁴

¹ Dr. Gragnani multiplied the 25 percent sensory loss taken from Table 15-15, page 424 of the A.M.A., *Guides*, for Grade IV impairments times 5 percent, the maximum value for sensory loss associated with the L5 nerve distribution under Table 15-18, page 424 of the A.M.A., *Guides*, to yield the 1.25 figure.

² 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

³ 5 U.S.C. § 8107(c)(19).

⁴ 20 C.F.R. § 10.404.

In this case, the Office medical adviser determined that appellant had a one percent permanent impairment of the left lower extremity by adopting Dr. Gragnani's findings that he sustained impairment due to sensory loss in the L5 nerve root. The Office medical adviser relied on the clinical findings of Dr. Gragnani, who properly calculated the level of sensory loss at 25 percent and derived a 1 percent impairment based on the applicable figures and tables of the A.M.A., *Guides*. Dr. Gragnani noted that appellant's examination showed a pattern of some sensory change, but only in the left L5 nerve root distribution; he found there were no clinical findings to support additional impairment based on his lumbar spine condition. The Office medical adviser further noted that Dr. Gragnani found no residuals of a cervical spine condition. Dr. Gragnani advised that there was no documentation of a specific nerve root lesion in the cervical spine other than from the EMG report of C7 and no specific sensory or motor pattern on which to base a rating for the left upper extremity due to cervical involvement. Dr. Wilkinson found that appellant had a 16 percent impairment due to lumbar disc disease⁵ and a 15 percent impairment due to cervical spine disorder. These ratings, however, are of limited probative value because they were not rendered in accordance with the A.M.A., *Guides*.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a one percent permanent impairment for loss of use of permanent impairment of the left lower extremity, for which he has received a schedule award from the Office and that appellant has failed to provide probative, supportable medical evidence that he has greater than the one percent impairment already awarded.

The decision of the Office of Workers' Compensation Programs dated May 19, 2003 is hereby affirmed.

Dated, Washington, DC
January 13, 2004

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ The Board notes that this condition was not accepted by the Office.