

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**ANN K. ARMOUR, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Chula Vista, CA, Employer**

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**Docket No. 04-829  
Issued: July 6, 2004**

*Appearances:*  
*Ann K. Armour, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On February 9, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated December 1, 2003 granting a schedule award for a three percent impairment to each of the lower extremities. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award.

**ISSUE**

The issue is whether appellant has more than a three percent impairment to each of the lower extremities, for which she received schedule awards.

**FACTUAL HISTORY**

On May 3, 2002 appellant, then a 42-year-old letter carrier, filed an occupational disease claim for her back condition. She first became aware of her back condition on April 20, 2002 and realized that her condition was caused or aggravated by her employment on April 22, 2002, when she stopped work. The Office accepted the conditions of a lumbar strain and aggravation

of thoracic and lumbosacral neuritis and paid appropriate benefits. Appellant returned to full-time modified duties on February 22, 2003.

In a December 27, 2002 report, Dr. Kristi A. Dove, a Board-certified neurologist, examined appellant and found the Achilles reflex was depressed on the right side. A lumbar strain, irritation of the S1 nerve root on the right side, and facet arthropathy were diagnosed and facet blocks were recommended.

In a May 13, 2003 report, Dr. Richard C. Ostrup, a Board-certified neurological surgeon, noted that appellant was working limited duty and provided a history of the injury including medical treatment. He noted that appellant complained of lower back pain and bilateral lower extremity symptomatology. Examination findings revealed no reflex abnormalities, no motor problems and negative straight leg raising bilaterally. Dr. Ostrup noted an abnormality with a slight bulge at the L4-5 disc, but opined that there was no concurrence with this finding and the severity of her pain. He advised that he did not have a diagnosis as to why her pain was so significant and opined that her subjective complaints were not substantiated by objective findings. He further opined that appellant should be considered permanent and stationary and was not considered a surgical candidate.<sup>1</sup>

On October 23, 2003 appellant filed a Form CA-7 claim for a schedule award.

In an October 6, 2003 report, Dr. Lisa Emond, appellant's treating physician, provided a history of the injury and results of diagnostic tests. She stated that appellant had reached maximum medical improvement and was considered permanently disabled from returning to her occupation as a letter carrier. She opined that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a 13 percent impairment based on S1 radiculopathy and loss of motion of the back. Dr. Emond advised that continued pain in the lower extremity, decreased sensation in S1 dermatome and objective testing support S1 radiculopathy.

In a November 7, 2003 report, Dr. Leonard A. Simpson, an Office medical adviser, reviewed the case record. He noted that the records indicated bilateral lower extremity symptomatology, possibly not explained by appellant's objective clinical findings, involving the branches of S1 nerve root as reflected by the decreased pinprick sensation Dr. Dove had reported. The Office medical adviser calculated that appellant had a five percent impairment of each leg for sensory deficit or pain in the distribution of the S1 spinal nerve root under Table 15-18 of the A.M.A., *Guides*, fifth edition. He further calculated that appellant had a maximum sensory loss of 60 percent of each leg, a Grade 3 pain in the distribution of the S1 spinal nerve root under Table 15-15. Impairment due to sensory loss was calculated as a 3 percent impairment for each lower extremity or leg by multiplying the 60 percent grade with the 5 percent maximum allowed for the S1 nerve. The Office medical adviser noted that there was no atrophy or weakness representing zero percent impairment. He further noted that there was no loss of hip, knee, ankle, subtalar or toe range of motion, and found a zero percent impairment. The Office medical adviser concluded that appellant sustained a three percent impairment for each lower extremity, with a date of maximum medical improvement of May 13, 2003.

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<sup>1</sup> The Board notes that Dr. Ostrup signed the report on May 23, 2003.

By decision dated December 1, 2003, the Office issued schedule awards for a three percent impairment of each lower extremity impairment. The period of the award was from May 13 to September 10, 2003.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act,<sup>2</sup> and its implementing federal regulation,<sup>3</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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>4</sup>

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.<sup>5</sup> As neither the Act nor its regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole, no claimant is entitled to such a schedule award.<sup>6</sup> The Board notes that section 8109(19) specifically excludes the back from the definition of "organ."<sup>7</sup> However, a claimant may be entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the neck, shoulders or spine.<sup>8</sup>

### **ANALYSIS**

In this case, appellant alleged that she is entitled to greater than a three percent permanent impairment of each lower extremity for which she received a schedule award. She relies on a medical report from Dr. Emond, dated October 6, 2003, finding that she had a 13 percent impairment based on S1 radiculopathy and loss of motion of the back. As noted, however, the Act does not permit a schedule award based on impairment to the back or spine. Appellant may only be awarded a schedule award for impairment to the upper or lower extremities due to her accepted back condition.

The Board has carefully reviewed the record and finds that appellant has no more than a three percent permanent impairment of each of her lower extremities. An Office medical adviser properly reviewed the medical record and noted that the decreased pinprick sensation described

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> 20 C.F.R. § 10.404(a).

<sup>5</sup> *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>6</sup> *See Jay K. Tomokiyo*, 51 ECAB 361 (2000).

<sup>7</sup> 5 U.S.C. § 8109(c).

<sup>8</sup> *Thomas J. Engelhart*, *supra* note 5.

by Dr. Dove related to the S1 spinal nerve root. The Office medical adviser compared the finding of bilateral leg pain/symptomatology to the grading scheme at Tables 15-15, 15-18, page 424 of the A.M.A., *Guides* which provide a maximum of 5 percent impairment due to sensory deficit or pain arising from the S1 spinal nerve root. The medical adviser allowed a 60 percent impairment based on Grade 3 pain in the distribution of the S1 spinal nerve root. The 60 percent grade when applied to the maximum 5 percent allowed for the S1 distribution totaled a 3 percent impairment to each lower extremity.<sup>9</sup> Because there were no other physical findings of record, except for reports of bilateral lower extremity pain, from which to calculate permanent impairment under the A.M.A., *Guides*, the Board concludes that appellant has not established that she is entitled to more than the schedule award granted by the Office.<sup>10</sup> Appellant has provided no relevant medical evidence to establish that she has more than a three percent impairment to each of the lower extremities.

### CONCLUSION

The Board finds that there is no evidence of record that appellant has more than a three percent impairment of each lower extremity.

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<sup>9</sup> While the medical opinion of Dr. Emond was erroneously based in part on a loss of motion of the back, her clinical data can be readily extrapolated and evaluated within the tables and guidelines as presented. *Michael D. Nielsen*, 49 ECAB 453 (1996). In such cases, it is appropriate for an Office medical adviser to review the clinical findings of the treating physician to determine the permanent impairment. *See generally Charles A. Sciulli*, 50 ECAB 488 (1999).

<sup>10</sup> The Board notes that a separate pain calculation under Chapter 18 may not be used in combination with other methods to measure impairment due to sensory pain as outlined in Chapters 13, 16 and 17 of the fifth edition of the A.M.A., *Guides*. FECA Bulletin No. 01-05 (issued January 29, 2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs decision dated December 1, 2003 is affirmed.

Issued: July 6, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member