

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

ISABELLE MITCHELL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Crystal Lake, IL, Employer**

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**Docket No. 04-830
Issued: July 8, 2004**

Appearances:
Thomas A. Vaclavek, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 11, 2004 appellant filed an appeal of an Office of Workers' Compensation Programs' decision dated October 23, 2003, granting a schedule award for a three percent impairment to the left lower extremity. Pursuant to 20 C.F.R §§ 501.2(c) and 501.3, the Board has jurisdiction to review the October 23, 2003 schedule award decision.

ISSUE

The issue is whether appellant has more than a three percent impairment to her left lower extremity.

FACTUAL HISTORY

On February 29, 1996 appellant filed a traumatic injury claim (Form CA-1), alleging that she sustained an injury in the performance of duty on February 26, 1996. The Office accepted the claim for an acute lumbosacral strain. Appellant, a distribution clerk, returned to work in a light-duty position and did not return to her date-of-injury position.

In August 1998, the Office referred appellant to Dr. Forrest Riordan, III, an orthopedic surgeon, for an opinion as to appellant's continuing condition. In a report dated September 1, 1998, he stated that appellant had a chronic lumbosacral strain and iliolumbar muscle pain, gluteal and iliotibial band tendinitis, with left leg radiculopathy. Dr. Riordan indicated that appellant could not work full duty at that time.

Appellant submitted a report dated June 2, 2003 from a Dr. D.A. Minnis. The letterhead of the report identifies the Spine and Joint Rehabilitation Center, 1415 South Fifth Avenue, Maywood, Illinois. No information was provided as to Dr. Minnis' medical specialty. He provided results on physical examination and opined that appellant had a 12 percent impairment of the left lower extremity utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.¹

The Office requested that an Office medical adviser review the evidence and provide an opinion as to the degree of any impairment. In a report dated September 1, 2003, an Office medical adviser reviewed the medical evidence. The medical adviser noted that Dr. Minnis had provided a detailed analysis of appellant's situation and had recommended a 12 percent impairment to the left lower extremity. According to the medical adviser, however, the objective findings did not support such an award. He stated that there was negative straight leg raising, normal strength, with mild decreased sensation in the distribution of the L5 nerve root. The medical adviser recommended a three percent impairment for the left lower extremity, based on a Grade 3 impairment to the L5 nerve root for radicular pain/dysesthesia according to Tables 15-18 and 15-15. With respect to the date of maximum medical improvement, the medical adviser reported September 1, 1998, the date of examination by Dr. Riordan.

By decision dated October 23, 2003, the Office issued a schedule award for a three percent impairment to the left leg. The period of the award was 8.64 weeks from September 1, 1998.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining 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.⁴

¹ A.M.A., *Guides* (5th ed. 2001).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (2003).

⁴ 20 C.F.R. § 10.404 (2003).

ANALYSIS

In the present case, appellant submitted a report from a Dr. D.A. Minnis with respect to the degree of impairment to the left lower extremity. He did not identify his medical specialty. According to the directory of the American Chiropractic Association, Dr. Minnis, at 1415 South Fifth Avenue, Maywood, Illinois, is a chiropractor.⁵ Section 8101(2) of the Act provides that the term “‘physician’ ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.”⁶

Dr. Minnis did not diagnose a subluxation as demonstrated by x-ray and, therefore, he is not considered a physician under the Act and his report is of no probative medical value.⁷ The Board notes that the Office medical adviser based his opinion, at least in part, on the evidence provided by Dr. Minnis. The medical adviser noted the detailed analysis provided by him and discussed his physical examination findings. Since Dr. Minnis is not considered a physician under the Act, his report is not a proper basis for a schedule award. The case will be remanded to the Office for an appropriate decision based on the probative medical evidence of record.

CONCLUSION

The Board finds that Dr. Minnis is a chiropractor and his June 2, 2003 report is of no probative medical value. The report cannot be considered for the purposes of a schedule award and the case is remanded to the Office for further development and an appropriate decision on appellant’s entitlement to a schedule award.

⁵ American Chiropractic Association, Membership Directory, *available at* <http://www.amerchiro.org>.

⁶ 5 U.S.C. § 8101(2).

⁷ *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 23, 2003 is set aside and the case remanded for a decision consistent with this decision of the Board.

Issued: July 8, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member