

Office denied appellant's requests for reconsideration. By decision dated August 5, 2002, the Office set aside its previous denials and accepted the claim for herniated nucleus pulposus at L4-5.

On April 6, 2003 appellant filed a Form CA-7 claim for a schedule award based on partial loss of use of her left and right lower extremities. In a report dated May 12, 2003, Dr. Timothy J. Perrin, a Board-certified orthopedic surgeon, found that appellant had a 22 percent whole-person impairment causally related to her accepted employment injury. Dr. Perrin stated that the results of a magnetic resonance imaging scan dated March 26, 2003 showed a broad-based disc protrusion on the left at L5-S1 which caused pressure about the S1 root. He noted mild degeneration of her discs at L4-5 and L5-S1, consistent with that resulting from her disc protrusions. Dr. Perrin noted that a May 12, 2003 x-ray of the lumbar spine showed narrowing at L4-5 and L5-S1 with no effective motion at these levels. He also advised that appellant had chronic low back pain, greater on the right side than the left, with radiculopathy due to cumulative trauma. Dr. Perrin opined that appellant's low back problems at L4-5 and L5-S1 were solely related to cumulative industrial trauma while working for the employing establishment.

With regard to an impairment rating, Dr. Perrin stated that, according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition), appellant belonged in category 4 out of 5 of the diagnosis-related estimates. Dr. Perrin explained that this rating was based on her near complete loss of motion at L4-5 and L5-S1, her status post unsuccessful low back surgery, the fact that she had signs and symptoms of right lower extremity radiculopathy -- atrophy, weakness and loss of sensation in the right lower extremity -- and her significant symptomatology. Based on these factors, Dr. Perrin rated appellant at a 22 percent whole person impairment. Dr. Perrin noted that appellant's affected nerve root origin and specific nerve branches were L5 and S1 on the right and advised that she had moderate pain with a Grade 4 of 5 weakness or atrophy. Dr. Perrin opined that appellant reached maximum medical improvement as of May 12, 2003.

In a memorandum/impairment evaluation dated July 9, 2002, an Office medical adviser reviewed Dr. Perrin's findings and conclusions and determined that appellant had a 20 percent permanent impairment for loss of use of the right lower extremity. He stated:

“Utilizing the fifth edition of the A.M.A., *Guides*, the L5 and S1 nerve roots are assessed a maximal 5 percent each for loss of function due to sensory deficit or pain as per Table 15-18, page 424. With the pain described as moderate, one would grade this a maximal Grade 2 as per Table 15-15, which is assessed a maximum 61-80 percent sensory deficit. One would utilize a mean or 70 deficit of the maximum 10 to arrive at a 7 percent impairment of the right lower extremity or leg. Grade 4 weakness is assessed a maximal 25 percent motor deficit as per Table 15-16 [page 424]. One would utilize branches of L5, which are assessed a maximal 37 percent impairment and branches of S1, which are assessed a maximal 20 percent for maximum percent loss of function due to strength as per Table 15-18. A 25 percent of 37 percent would be 9.25 and 20 percent of 20 percent for S1 would be 5 percent. The records do not document any loss of peripheral joint range of motion for a 0 percent impairment. Utilizing

the Combined Values Chart, the 5 percent for S1 weakness, combined with 9 percent for L5 weakness, combined with the 7 percent for pain factors and/or numbness, would be equivalent to a 20 percent impairment. These records would support a 20 percent impairment of the right lower extremity or leg, and a 0 percent impairment of the left lower extremity or leg.”

On July 17, 2003 the Office granted appellant a schedule award for a 20 percent permanent impairment of the right leg for the period May 12, 2003 to June 18, 2004, for a total of 57.6 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act¹ 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.² 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.³

ANALYSIS

In this case, the Office medical adviser determined that appellant had a 20 percent permanent impairment of the right lower extremity by taking Dr. Perrin’s findings and conclusions regarding sensory loss at the L5 and S1 nerve roots and a moderate level of pain and applying them to the relevant tables and charts of the A.M.A., *Guides*. The Office medical adviser derived a 5 percent lower extremity impairment based on 20 percent of the maximum 20 percent for sensory deficit/weakness at the S1 level pursuant to Table 15-18, page 424 of the A.M.A., *Guides*; 9 percent based on a 25 percent out of 37 percent for sensory deficit/weakness at the L5 level pursuant to Table 15-18, page 424 of the A.M.A., *Guides*; and 7 percent for pain factors and/or numbness due to moderate pain, rated Grade 2 pursuant to Table 15-15, a 70 percent deficit out of a maximum 10 percent at page 424 of the A.M.A., *Guides*.

The Office medical adviser then combined these totals under the Combined Values Chart used to combine multiple impairments.⁴ Combining 9 percent, 7 percent and 5 percent results in a 19 percent impairment to the lower extremity. The probative medical evidence therefore does not establish more than a 20 percent permanent impairment of the right lower extremity.

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

² 5 U.S.C. § 8107(c)(19).

³ 20 C.F.R. § 10.404.

⁴ A.M.A., *Guides*, 604.

On appeal appellant argued that residuals of the employment injury involved her right foot, as well as her right leg, and yet the schedule award was issued for the right leg only. The impairment rating in this case, however, was based on spinal nerve root impairments affecting the right lower extremity, which includes the right foot. The medical evidence did not show any specific additional impairment to the right foot that was not included in the 20 percent impairment rating. The Office decision reported that the impairment was to the right leg, because under 5 U.S.C. § 8107 compensation for permanent impairment is paid only for identified member or functions of the body. Section 8107 identifies both the leg and the foot; when an impairment extends into an adjoining member, the award is made on the basis of the loss of use of the larger member.⁵ The maximum number of weeks of compensation for impairment to the leg is 288,⁶ and therefore appellant was paid 20 percent of 288, or 57.6 weeks of compensation.

CONCLUSION

The Board finds that appellant has no more than a 20 percent permanent impairment of the right lower extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 18, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁵ *Asline Johnson*, 42 ECAB 619 (1991).

⁶ 5 U.S.C. § 8107(c)(2).