United States Department of Labor
Employees' Compensation Appeals Board

LINDA CHAPARRO, Appellant	)	
and	)	**Docket No. 04-1263**
	)	**Issued: September 29, 2004**
U.S. POSTAL SERVICE, SECURITY BRANCH, Colorado Springs, CO, Employer	)	

Appearances:
Linda Chaparro, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 13, 2004 appellant filed an appeal of a merit decision of the Office of Workers' Compensation Programs dated March 19, 2004 which granted her a schedule award for a one percent impairment of the left leg. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue in the case.

ISSUE

The issue is whether appellant has more than a one percent impairment of her left leg, for which she received a schedule award.

FACTUAL HISTORY

On December 14, 2002 appellant, then a 56-year-old distribution clerk, filed an occupational disease claim alleging that she developed a sciatic nerve illness and lower back pain causally related to her federal employment duties. Appellant received medical treatment for this condition beginning December 6, 2002 and was diagnosed with a disc injury on January 2, 2003

by Dr. Philip A. Pennington, a Board-certified family practitioner. He recommended that appellant not lift anything heavier than five pounds.

On January 6, 2003 the employing establishment advised appellant that her request for light duty would be accommodated with work for two hours a day.

In a June 23, 2003 letter, the Office advised appellant that her claim had been accepted for displacement of L4-5 intervertebral disc without myelopathy. It advised her of how she could claim compensation and that she was expected to return to work when she was no longer totally disabled.

On August 4, 2003 Dr. Daniel W. Baer, a Board-certified osteopathic physician specializing in physical medicine and rehabilitation, indicated that appellant could continue working full time with restrictions on lifting more than 40 pounds and no frequent bending. He also recommended five-minute breaks every hour and limitations on standing and twisting.

In a report dated August 4, 2003, Dr. Baer reviewed appellant's treatment with physical therapy, her continuing pain complaints and her current physical results upon examination. He diagnosed extruded herniated disc at L4-5 with impingement of the right S1 nerve root, 70 percent resolved, and he projected that she would continue to improve. On August 28, 2003 Dr. Baer described appellant's persistent symptoms and he diagnosed lumbar radiculopathy with a positive electromyogram (EMG) and mild denervation in the L4 nerve root distribution. He noted that, when she finished her physical therapy, she would be at maximum medical improvement and could be rated for an impairment.

Regarding appellant's request for a schedule award, by letter dated September 9, 2003, the Office advised that schedule awards were paid only for permanent impairment involving scheduled members of the body, and that the medical evidence had to describe fully her impairment as it affected her extremities.

In an October 8, 2003 medical report, Dr. Baer described appellant's symptoms and provided measurements of her lumbar ranges of motion and straight leg raising. He opined that applying the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Table 15, 3 DRE Lumbar Category 3 she continued to have low back pain and she also has a positive EMG for L4 radiculopathy, but had no positive straight leg raising examinations. Dr. Baer noted that appellant had a good full range of motion, but the magnetic resonance imaging (MRI) scan continued to show a herniated disc at L4. He noted that she complained of back pain with heavy lifting but that she could do all activities of daily living. He rated her at a 10 percent permanent impairment of the whole body.

On October 13, 2003 appellant was discharged from physical therapy.

On October 20, 2003 Dr. Baer opined that as of that date appellant had reached maximum medical improvement and he placed her on medication monitoring only.

On December 16, 2003 Dr. Baer noted that appellant returned complaining of left-sided symptoms of the same type as her right leg symptoms and he recommended another MRI scan. He indicated that appellant had reached maximum medical improvement on October 8, 2003 and repeated this on December 30, 2003.

On January 16, 2004 the Office referred the medical record to an Office medical adviser for an opinion as to the date of appellant's maximum medical improvement and the degree of permanent impairment based on the application of the A.M.A., *Guides* (5th ed. 2001).

On January 16, 2003 the Office medical adviser noted that Dr. Baer had correctly applied the A.M.A., *Guides,* fifth edition, and recommended the use of Tables 15-15, 15-16 and 15-18 on page 424. He noted that, since the Office did not accept axial skeletal ratings, the impairment rating had to be based on the findings in the lower extremities.

Appellant submitted a January 15, 2004 MRI scan report of her lumbar spine which was reported as showing mild disc degeneration at L5-S1, unchanged, partial resorption of the right lateralizing herniation at L4-5 seen previously with mild residual right foraminal narrowing on the right.

By letter dated January 22, 2004, the Office advised Dr. Baer that impairment ratings could not be made as to the spine. It requested that Dr. Baer provide an impairment rating of the lower extremities in accordance with Tables 15-15, 15-16 and 15-18 on page 424 of the A.M.A., *Guides.*

In a February 2, 2004 report, Dr. Baer noted that he used Tables 15-15, 15-16 and 15-18 of the fifth edition of the A.M.A., *Guides* for rating appellant's impairment. He noted:

> "Using 15-15, [appellant] still does have sensory tactile sensitivity with abnormal sensations of pain ... [which he rated as] 25 percent rating [at] [G]rade 4 times a 5 percent for L4 dermatome from [T]able 15-18, equaling a 1.25 percent impairment. Then using Table 15-16 and combining that for maximal function or loss at the L4 dermatome for strength testing despite having a positive EMG for L4 radiculopathy or strength at 5/5, thus giving her a zero percent motor deficit times 34 percent equals a 0 percent deficit. This would give her a one percent impairment rating. Then, looking at Table 17-3, a 1.25 percent impairment of the lower extremity equals 0 percent whole person impairment rating. Thus, using these charts for her radiculopathy, at this point she would receive no impairment rating."

On March 12, 2004 the Office medical adviser reviewed Dr. Baer's findings and, using Tables 15-15, 15-16 and 15-18, found that, due to sensory symptomatology, appellant had a one percent impairment of her left lower extremity.

By decision dated March 19, 2004, the Office granted appellant a schedule award for a one percent impairment of her left leg for the period October 8 to 28, 2003 or 2.88 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] sets 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 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. As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.

ANALYSIS

Dr. Baer, appellant's treating physician, correctly applied the A.M.A., *Guides*, fifth edition, Tables 15-15, 15-16 and 15-18 to find that appellant had a one percent permanent impairment of her left leg due to sensory disturbances. The Office medical adviser agreed with the date of maximum medical improvement and confirmed that Dr. Baer had properly applied the A.M.A., *Guides*. Dr. Baer utilized Grade 4 of Table 15-15, page 424 of the A.M.A., *Guides* to determine that appellant had 25 percent impairment due to sensory tactile sensitivity with abnormal sensations of pain. He then proceeded to Table 15-18, also on page 424 of the A.M.A., *Guides*, and determined that the L4 nerve root was impaired for a maximum of 5 percent impairment due to loss of function due to sensory deficit or pain. Dr. Baer then returned to Table 15-15 and multiplied the 25 percent impairment by the 5 percent impairment resulting, in 1.25 percent impairment due to sensory deficit or pain. He used Table 15-16 at page 424 of the A.M.A., *Guides* and determined that appellant had a Grade 5 or zero percent impairment due to loss of power and motor deficit. The doctor then determined that appellant had a 34 percent maximum impairment of the L4 nerve root due to loss of function due to strength. In multiplying the 0 percent impairment by the 34 percent impairment, Dr. Baer came up with a 0 percent impairment for loss of strength. In adding the 1.25 percent impairment for sensory deficit or pain to the 0 percent impairment for loss of strength, the doctor correctly concluded that appellant had a 1.00 percent impairment of the left lower extremity. The Board notes that the Office medical adviser properly rounded down the 1.25 percent impairment to a 1 percent impairment.

In an October 8, 2003 report, Dr. Baer listed appellant's impairment in terms of the whole body, which the Board notes is not a basis for a schedule award under the Act.[3] After direction by the Office, Dr. Baer provided a detailed report with findings, including calculations with references to the tables in the A.M.A., *Guides*. He determined, in his February 2, 2004 report,

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (2002).

[3] *See Phyllis F. Cundiff*, 52 ECAB 439, 440 (2001).

that appellant had a one percent permanent impairment using Tables 15-15, 15-16 and 15-18.[4] His report constitutes the weight of the medical opinion.

Appellant has not provided any other medical evidence to establish that her left leg impairment is greater than one percent.

CONCLUSION

Appellant has no more than a one percent permanent impairment of her left leg, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 19, 2004 is affirmed.

Issued: September 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[4] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 1994).