



Appellant returned to limited duty on April 21, 1998 and she resumed her regular duties on July 24, 1998.

On January 18, 2000 appellant filed a claim for a schedule award. The Office referred appellant for examination by Dr. Archana Barve, a Board-certified physiatrist, who in a report dated March 19, 2002 found that appellant had 20 percent impairment of the right lower extremity and 15 percent impairment of the left lower extremity. The Office medical adviser reviewed the record including Dr. Barve's findings and in a report dated November 19, 2002 similarly found that appellant had 15 percent impairment of the left lower extremity.

On January 30, 2003 the Office granted a schedule award for 15 percent impairment of the left lower extremity. The award covered a 43.2-week period March 19, 2002 to January 15, 2003.

Another Office medical adviser reviewed the record and, in a February 6, 2003 report, concurred with Dr. Barve's findings concerning appellant's 20 permanent impairment of the right lower extremity.

On February 11, 2003 the Office issued a schedule award for a five percent impairment of the right lower extremity, which covered the period January 16 to April 26, 2003. The decision stated that appellant had previously been awarded a 15 percent impairment of the left lower extremity, which should have been awarded for the right lower extremity. The Office further explained that the current 5 percent award for the right lower extremity was in compliance with its medical adviser's finding of a 20 percent impairment of the right lower extremity. Thus, the Office effectively amended the January 30, 2003 award to reflect entitlement for the right lower extremity.

On May 13, 2003 the Office granted appellant a schedule award for a 15 percent impairment of the right lower extremity. The award covered a period of 43.2 weeks, beginning April 27, 2003 and continuing through February 23, 2004. The Office issued a corrected award of compensation on August 28, 2003, noting that the May 13, 2003 schedule award incorrectly identified appellant's right lower extremity rather than the left lower extremity. Accordingly, the Office amended the award to reflect appellant's entitlement to an award for a 15 percent impairment of the left lower extremity.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>1</sup> The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate

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<sup>1</sup> The Act provides that, for a total, or 100 percent loss of use of a leg, an employee shall receive 288 weeks of compensation. 5 U.S.C. § 8107(c)(2).

standard for evaluating schedule losses.<sup>2</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>3</sup>

### ANALYSIS

On appeal counsel does not specifically take issue with the Office's reliance on Dr. Barve's March 19, 2002 findings and the Office medical adviser's November 19, 2002 concurrence that appellant had a 15 percent impairment of the left lower extremity.<sup>4</sup> Dr. Barve and the Office medical adviser properly calculated a combined left lower extremity impairment of 15 percent based on motor and sensory deficits involving the L5 and S1 nerve roots. Dr. Barve referenced Tables 15-15, 15-16 and 15-18, A.M.A., *Guides* 424 and the Office medical adviser concurred with this rating.<sup>5</sup> Appellant has not identified any evidence that she has greater than a 15 percent impairment of the left lower extremity. Inasmuch as the Office medical adviser's calculation conforms to the A.M.A., *Guides* (5<sup>th</sup> ed. 2001), the finding constitutes the weight of the medical evidence.<sup>6</sup>

Counsel's sole contention on appeal is that the Office neglected to fully compensate appellant for her right lower extremity impairment. Appellant does not argue that she was not fully compensated on her August 28, 2003 schedule award for the left lower extremity, which covered 43.2 weeks, beginning April 27, 2003 and continuing through February 23, 2004. According to counsel, the Office refused to pay the full award for the right lower extremity. The February 11, 2003 schedule award for an additional five percent impairment of the right lower extremity covered the period January 16 to April 26, 2003. Appellant received payments for the period January 16 to February 22, 2003; however, there is no evidence of payment having been made for the remaining period February 23 to April 26, 2003. The Board, however, does not have jurisdiction over the February 11, 2003 award for the right lower extremity because that decision was issued more than one year prior to the filing of the current appeal.<sup>7</sup>

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<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

<sup>4</sup> The record includes a number of earlier impairment ratings prepared by Dr. John W. Ellis, a Board-certified family practitioner, Dr. Ralph E. Payne, Jr., a Board-certified orthopedic surgeon and Office referral physician, and Dr. John B. Hughes, a Board-certified orthopedic surgeon and Office referral physician. The impairment ratings from Drs. Ellis, Payne and Hughes are of limited probative value in part because the doctors did not properly rate appellant's impairment in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>5</sup> The severity of appellant's motor sensory deficit was classified as Grade 4 under Tables 15-15 and 15-16, A.M.A., *Guides* 424, which represents a maximum motor sensory deficit of 25 percent. The severity of the motor/sensory deficit was then multiplied by the maximum impairment value of the affected nerve root under Table 15-18, A.M.A., *Guides* 424. Appellant received 9 percent (.37 x .25) impairment for motor deficits involving the L5 nerve root and 5 percent (.20 x .25) impairment for motor deficits involving the S1 nerve root, which were added together for a total 14 percent impairment for motor deficits. Additionally, she received 1 percent (.05 x .25) impairment for sensory deficit involving the L5 nerve root. The sensory and motor deficits were properly combined for a total left lower extremity impairment rating of 15 percent.

<sup>6</sup> See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

<sup>7</sup> 20 C.F.R. § 501.3(d).

**CONCLUSION**

The Board finds that appellant failed to establish that she has more than a 15 percent impairment of the left lower extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** August 28, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
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