

FACTUAL HISTORY

On June 5, 1998 appellant, then a 37-year-old letter carrier, experienced persistent pain in her right hip and lower back. In a February 19, 1999 report, Dr. Judith Cagan, a Board-certified family practitioner, stated that she had strains of the right hip and lower back which were aggravated by her work, causing radicular symptoms. In a June 2, 1999 letter, the Office accepted appellant's claim for a strain of the right hip.

The Office referred appellant to Dr. Frank Cunningham, a Board-certified orthopedic surgeon, for an examination and a second opinion on the diagnosis of her condition and its relationship to her employment injury. In a June 24, 1999 report, with an undated addendum, Dr. Cunningham stated that a magnetic resonance imaging (MRI) scan of the lumbar spine showed a Grade 1 spondylolisthesis of L5-S1 with deformity and narrowing of the neural foramina bilaterally. The MRI scan also showed degenerative disc disease at L4-5. Dr. Cunningham reported that an electromyogram (EMG) and examination indicated that appellant had findings consistent with a mild L5 radiculopathy in the right leg. He indicated that an MRI scan of the right hip was negative. Dr. Cunningham diagnosed Grade 1 spondylolisthesis at L5-S1 with compromise of the neural foramina, right radiculitis and mild L5 radiculopathy and a strain of the right hip with transient synovitis, secondary to the lumbar spine pathology and altered gait. He concluded that the onset of symptoms and appellant's reduced work capacity was the result of her work activities.

In an August 27, 1999 letter, the Office informed appellant that her claim had also been accepted for spondylolisthesis Grade 1, L5-S1, with mild right L5 radiculopathy. The Office subsequently paid compensation for intermittent periods of disability.

In a September 27, 1999 report, Dr. Bonnie Flannigan, a Board-certified radiologist, stated that an MRI scan showed degenerative disc disease at L3-4, L4-5 and L5-S1. She noted that appellant had moderate degenerative facet changes in L5-S1 with some asymmetry of the posterior elements. Dr. Flannigan reported that appellant had changes suspicious for bilateral pars defects although there was no evidence of a frank spondylolisthesis. In a September 30, 1999 report, Dr. Ali A. Dini, a Board-certified orthopedic surgeon, diagnosed lumbar sprain/strain, sciatica and spondylosis. In a March 21, 2000 report, he diagnosed right carpal tunnel syndrome, synovitis of the right hip and spondylolisthesis.

On June 1, 2000 appellant filed a claim for a schedule award. In a September 15, 2000 report, Dr. A. Kevin Aminian, a Board-certified physiatrist, indicated that an EMG of the legs was normal. On March 14, 2001 appellant submitted a January 16, 2001 report from Dr. Dini, who indicated that her condition was permanent and stationary.

In an April 19, 2001 letter, the Office asked Dr. Dini whether appellant had any objective findings for radiculopathy. In a June 12, 2001 report, he indicated that appellant's condition was permanent and stationary as of January 16, 2001. Dr. Dini stated that appellant had lost approximately 50 percent of her preinjury capacity for lifting, bending and stooping and the standard 25 percent for no heavy lifting, repeated bending, and stooping.

In an August 23, 2002 report, Dr. A. Reza Ehyai, a Board-certified neurologist, stated that an EMG was normal for both legs with no evidence of radiculopathy from L3 to S1. He reported that all motor and sensory nerve conduction studies were also normal.

The Office referred appellant's case record to Dr. Leonard A. Simpson, an orthopedic surgeon and Office medical consultant, to determine whether she had a permanent impairment of the legs. In a March 4, 2003 memorandum, he stated that, despite current normal electrodiagnostic studies, the 1999 electrodiagnostic study showed mild L5 radiculopathy. Dr. Simpson indicated that subsequent medical reports showed appellant had low back pain with radicular symptoms greater in the right leg than the left. He noted that under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001)³ the L5 nerve root had a maximal five percent permanent impairment for sensory loss or pain.⁴ Dr. Simpson stated that the altered sensation in the right leg was a maximal Grade 3 which ranged from 26 to 60 percent deficit which would be slight or abnormal sensation that interfered with normal activities. He allowed a 43 percent grade and multiplied that by the 5 percent maximal permanent impairment for the L5 nerve root to find that appellant had a 2 percent permanent impairment of the right leg. Dr. Simpson indicated that appellant's left leg symptoms were Grade 4 which was a maximal 25 percent permanent impairment. He multiplied the 25 percent by the 5 percent maximal impairment for the L5 nerve root and calculated that she had a 1 percent permanent impairment of the left leg.

In an April 24, 2003 decision, the Office granted a schedule award for a two percent permanent impairment of the left leg and a one percent permanent impairment of the right leg.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulation⁶ 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.⁷

³ A.M.A., *Guides* (5th ed. 2001).

⁴ *Id.* at p. 424, Tables 15-15, 15-18.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.*

ANALYSIS

As explained above, Dr. Simpson found that appellant had a Grade 3 rating for pain and sensory loss of the right leg pursuant to Table 15-15 because she had some pain symptoms in the right leg which interfered with activity. Dr. Simpson averaged the allowable sensory deficit for a Grade 3 impairment to be 43 percent which, when multiplied by the 5 percent maximal impairment for the L5 nerve root pursuant to Table 15-18, was a 2 percent permanent impairment of the right leg. On the other hand, he noted that appellant had less symptoms in the left leg and, therefore, used the highest percentage for a Grade 4 rating for pain and sensory loss, 25 percent pursuant to Table 15-15 and multiplied that by the maximal 5 percent pursuant to Table 15-18, calculating that she had a 1 percent permanent impairment of the left leg.

As none of the other medical reports of record attempt to rate appellant's permanent impairment pursuant to the A.M.A., *Guides*, the evidence of record does not establish that she is entitled to a greater schedule award.

CONCLUSION

The Office properly determined that appellant had a two percent permanent impairment of the right leg and a one percent permanent impairment of the left leg for which she was entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 24, 2003 be affirmed.

Issued: January 14, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member