

improperly refused to reopen appellant's claim for a merit review regarding the issue of a schedule award.¹ The Board noted that a claimant may seek an increased schedule award if the evidence establishes that she sustained an increased impairment at a later date causally related to her employment injury. The Board found that appellant had submitted medical evidence regarding permanent impairment at a date subsequent to the prior schedule award decision and remanded the case to the Office for further review. In the second appeal, the Board issued a March 1, 2001 decision that affirmed a November 16, 1999 decision of the Office on the grounds that appellant had not established that she was entitled to a schedule award for permanent impairment to any of her extremities.²

In the third appeal, the Board issued a decision on September 17, 2003 which affirmed the October 24, 2002, January 16 and March 7, 2003 decisions of the Office.³ The Board found that the Office met its burden of proof to rescind a schedule award for a 12 percent permanent impairment of her left lower extremity and instead issue a schedule award for a 5 percent impairment of that member. The Board also found that appellant was not entitled to a schedule award for more than a 25 percent permanent impairment of her right lower extremity and that she did not meet her burden of proof to establish that she sustained a recurrence of disability on November 15, 1993 causally related to her August 20, 1992 employment injury.

By decision dated July 16, 2004, the Board set aside a January 30, 2004 Office decision denying merit review of the claim.⁴ The Board again found that the Office had improperly considered a request for an increased schedule award as a request for reconsideration and the case was remanded for an appropriate merit decision with respect to an increased schedule award. The facts and the circumstances of the case up to that point are set forth in the Board's prior decisions and are incorporated herein by reference.

As the Board noted in its July 16, 2004 decision, appellant submitted a December 8, 2003 report from the attending orthopedic surgeon, Dr. Jeff Gheraibeh, who diagnosed right carpal tunnel syndrome, L4-5 disc herniation affecting the S1 nerve root and spinal stenosis affecting the legs. He opined that appellant had a 15 percent lower extremity impairment and a 10 percent upper extremity impairment. In a brief report dated March 23, 2004, Dr. Gheraibeh stated that appellant had limited range of flexion of the lumbar region of 60 degrees, ankle dorsiflexion weakness and sensory loss in three fingers of both hands.

In a letter dated August 25, 2004, the Office requested that Dr. Gheraibeh provide a medical report that included findings on examination and an opinion as to the percentage of

¹ 51 ECAB 115 (1999). Appellant filed a claim for injury from an August 20, 1992 lifting incident and the accepted condition in the case is sciatica. By decision dated August 2, 1995, the Office denied appellant's claim for a schedule award on the grounds that no ratable impairment had been established.

² Docket No. 00-845 (issued March 1, 2001).

³ Docket No. 03-1068 and 03-1342 (issued September 17, 2003). The Office issued a schedule award for a 25 percent permanent impairment to the right leg on January 16, 2003 and a 5 percent left leg permanent impairment on March 7, 2003.

⁴ Docket No. 04-919 (issued July 16, 2004).

permanent impairment to one or both of the lower extremities based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Gheraibeh completed a form report diagnosing herniated L4-5 disc, spinal stenosis and carpal tunnel syndrome. He indicated that the affected nerve roots were S1 and the median nerve of the right arm; Dr. Gheraibeh reported a one percent leg impairment for sensory deficit, noting hypoesthesia of the outer foot of the left leg. With respect to decreased strength, he opined that appellant had a 12 percent leg impairment for “weak dorsi flexor and plantar flexors.” Dr. Gheraibeh did not identify specific tables under the A.M.A., *Guides*. The date of maximum medical improvement was reported as August 19, 2004.

In a report dated September 16, 2004, an Office medical adviser stated that appellant had chronic degenerative disc disease with stenosis and sciatica. The medical adviser identified the S1 nerve root and Table 15-18 of the A.M.A., *Guides*, which provides a maximum leg impairment of 5 percent for loss of function due to sensory deficit or pain and a maximum of 20 percent for loss of strength. The medical adviser graded the impairment at 25 percent of the maximum for both sensory deficit and weakness, for a 1.25 percent leg impairment due to sensory deficit and a 5 percent impairment for loss of strength. The impairment to the left leg was found to be six percent.

By decision dated October 6, 2004, the Office determined that appellant was not entitled to a schedule award for an upper extremity impairment. The Office indicated that the accepted condition was sciatica and there was no evidence of causal relationship between carpal tunnel syndrome and the employment injury in this case.

In a decision dated October 14, 2004, the Office issued a schedule award for an additional one percent permanent impairment to the left leg. The award ran for 2.88 weeks from August 19, 2004.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Federal Employees’ Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁵ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶

⁵ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁶ A. George Lampo, 45 ECAB 441 (1994).

ANALYSIS -- ISSUE 1

The Office issued a schedule award for a five percent permanent impairment to the left leg on March 7, 2003. Dr. Gheraibeh provided an opinion in his December 8, 2003 report, that appellant had a 15 percent lower extremity impairment without additional explanation or citing to the A.M.A., *Guides*. In his undated form report he indicated that appellant had a 13 percent impairment, based on 1 percent for sensory deficit and 12 percent for weakness, but did not explain how he calculated the percentage under the A.M.A., *Guides*. The only probative medical evidence referring to the A.M.A., *Guides* is from the Office medical adviser, who identified the S1 nerve root and the appropriate tables. Table 15-18 is used for spinal nerve root impairments affecting the lower extremity.⁷ The maximum impairment is determined and then the impairment is graded under Table 15-15 (for sensory deficit) and Table 15-16 (for motor deficits).⁸ For the S1 nerve root, the maximum leg impairment is 5 percent for sensory deficit and 20 percent for loss of strength. The medical adviser graded the impairments at 25 percent of the maximum for each impairment, resulting in 1.25 percent for sensory deficit and 5 percent for loss of strength, which is rounded to 6 percent.⁹

The September 16, 2004 report from the Office medical adviser represents the weight of the medical evidence as it is the only report which provides a reasoned medical opinion on the degree of left leg impairment under the A.M.A., *Guides*. The Office properly issued schedule awards for a six percent permanent impairment to the left leg. With respect to the right leg, the Board notes that appellant received a schedule award for a 25 percent permanent impairment. The record does not contain any probative medical evidence of a greater right leg impairment. Dr. Gheraibeh did not specifically discuss the right leg or provide medical evidence documenting a greater impairment.

LEGAL PRECEDENT -- ISSUE 2

It is well established that a schedule award under 5 U.S.C. § 8107 is payable if the employment injury has caused permanent impairment.¹⁰

ANALYSIS -- ISSUE 2

With respect to the upper extremities, Dr. Gheraibeh provided a diagnosis of carpal tunnel syndrome. The accepted condition in this case was sciatica, based on an August 20, 1992

⁷ A.M.A., *Guides* at 424, Table 15-18.

⁸ *Id.* at 424.

⁹ The percentage of impairment is rounded to the nearest whole point. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3 (June 2003).

¹⁰ See *Carolyn F. Allen*, 47 ECAB 240 (1995), where the Office properly rescinded a schedule award because there was no evidence the impairment was causally related to the employment injury; see also *Robert T. Stephens*, 33 ECAB 1389 (1982), where the Board held that no schedule award was appropriate as there was no evidence that the impairment to the feet was causally related to federal employment. If an employment injury results in a permanent impairment to a scheduled member of the body, a preexisting impairment to that member is included in determining the percentage. *Walter R. Malena*, 46 ECAB 983 (1995).

employment incident involving the lifting of a large mixing bowl. There is no probative evidence of causal relationship between the employment incident and the diagnosis of carpal tunnel syndrome. As the condition has not been established as employment related with respect to this claim, appellant would not be entitled to a schedule award based on a permanent impairment resulting from carpal tunnel syndrome.

CONCLUSION

The Board finds that the probative medical evidence of record does not establish more than a six percent permanent impairment to the left leg, for which appellant received schedule awards on March 7, 2003 and October 14, 2004. The Board further finds that there is no medical evidence establishing entitlement to a schedule award for an upper extremity impairment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 14 and 6, 2004 are affirmed.

Issued: June 1, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member