

**United States Department of Labor
Employees' Compensation Appeals Board**

ROBERT E. SMITH, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Gadsden, AL, Employer**

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**Docket No. 05-337
Issued: May 11, 2005**

Appearances:
Robert E. Smith, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 23, 2004 appellant filed a timely appeal of the October 29, 2004 merit decision the Office of Worker's Compensation Programs, which found that he had no more than a six percent impairment of the left lower extremity for which he received a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether the Office properly determined that appellant had no more than a six percent impairment of the left lower extremity for which he received a schedule award.

FACTUAL HISTORY

This is the second appeal in the present case. In a February 26, 2004 decision, the Board reversed the Offices' decision dated July 25, 2003.¹ The Board concluded that the Office failed

¹ The Office accepted that appellant sustained an acute lumbar strain and permanent aggravation of degenerative arthritis in the performance of his duties on June 7, 2001.

to meet its burden of proof to terminate appellant's wage-loss compensation effective July 25, 2003. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.²

On March 3, 2004 appellant filed a claim for a schedule award. In a letter dated March 17, 2004, the Office requested that his treating physician provide an evaluation as to the extent of impairment of the left lower extremity in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.³ Appellant subsequently advised that Dr. William Stewart, his orthopedic surgeon, refused to further evaluate him unless he underwent surgery. He refused surgery and requested a referral to another physician for an impairment evaluation.

On July 16, 2004 the Office referred appellant for a second opinion to Dr. Howard Miller, a Board-certified orthopedist, for an evaluation of the degree of impairment of the left lower extremity in accordance with the A.M.A., *Guides*.

In a report dated August 10, 2004, Dr. Miller noted straight leg raises bilaterally produced pain at 80 degrees, there was pain on external and internal rotation of the hips and extension of the lumbar spine measured 15 to 20 degrees. He diagnosed lumbar degenerative disc disease. Dr. Miller advised that he reached maximum medical improvement and opined that his ability to work was limited due to the chronicity of his symptoms. He noted that the nerve branch affected by appellant's injury was S1 and opined that he sustained a three percent impairment of the lower extremity due to loss of function from sensory deficit and a five percent impairment due to loss of function from decreased strength for a total body impairment of eight percent.⁴

In a memorandum dated October 21, 2004, the Office referred Dr. Miller's report and the case record to the Office's medical adviser for evaluation as to the extent of impairment of the left lower extremity in accordance with the A.M.A., *Guides*. The Office medical adviser determined that appellant had reached maximum medical improvement on August 10, 2004. He determined that appellant sustained a six percent impairment of the left lower extremity, noting that he had chronic degenerative lumbar disc disease with left leg weakness. The Office medical adviser calculated that appellant had a five percent impairment of the left leg for sensory deficit or pain in the distribution of the S1 spinal nerve root under Table 15-18 of the A.M.A., *Guides*.⁵ He further calculated that appellant had a maximum sensory loss of 25 percent of the left leg, a Grade 4 pain in the distribution of the S1 spinal nerve root under Table 15-15.⁶ Impairment due to sensory loss was calculated as 1 percent impairment for the left lower extremity or leg by

² Docket No. 04-167 (issued February 26, 2004).

³ A.M.A., *Guides* (5th ed. 2001).

⁴ Dr. Miller initially noted that according to the A.M.A., *Guides* appellant sustained a 25 percent impairment to the lower extremity for his spinal impairment; however, he noted an addendum to his report which calculated an impairment of eight percent impairment of the total body.

⁵ See Table 15-18, page 424 (5th ed. 2001).

⁶ See Table 15-15, page 424 (5th ed. 2001).

multiplying the 25 percent grade with the 5 percent maximum allowed for the S1 nerve. The Office medical adviser calculated that he had a 20 percent impairment of the left leg for loss of strength in the distribution of the S1 spinal nerve root under Table 15-18 of the A.M.A., *Guides*. He further calculated that he had a maximum power and motor deficit of 25 percent of the left leg, a Grade 4 pain in the distribution of the S1 spinal nerve root under Table 15-16.⁷ Impairment due to power and motor deficits was calculated as five percent impairment for the left lower extremity or leg by multiplying the 25 percent grade with the 20 percent maximum allowed for the S1 nerve.

In a decision dated October 29, 2004, the Office granted appellant a schedule award for six percent impairment of the left lower extremity. The period of the award was August 10 to December 8, 2004.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁸ and its implementing regulation⁹ set 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 regulations as the appropriate standard for evaluating schedule losses.

ANALYSIS

On appeal, appellant argues that he is entitled to greater than six percent impairment of the left lower extremity. The Office accepted his claim for lumbar strain.

The Office referred appellant for a second opinion to Dr. Miller who issued a report dated August 10, 2004. The Board has carefully reviewed Dr. Miller's report of August 10, 2004 and notes that he did not adequately explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.¹⁰ In his report, Dr. Miller diagnosed lumbar degenerative disc disease. He indicated that the nerve branch affected by appellant's injury was S1 and opined that he sustained a three percent impairment of the lower extremity due to loss of function from sensory deficit and a five percent impairment due to loss of function from decreased strength for a total body impairment of eight percent. The A.M.A., *Guides*, Table 15-15, 15-16 and 15-18, page 424, set forth impairment rating for sensory and motor deficit for the nerve root and spinal cord. Although Dr. Miller determined that appellant sustained a three percent impairment of the lower extremity due to loss of function from a sensory deficit, he

⁷ See Table 15-16, page 424 (fifth edition 2001) (A.M.A., *Guides*).

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404 (1999).

¹⁰ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

failed to identify a grade of sensory deficit between one and five as set forth in the A.M.A., *Guides*¹¹ and subsequently failed to properly explain how he calculated a three percent impairment using Table 15-18, page 424 of the A.M.A., *Guides*.¹² Furthermore, Dr. Miller noted that appellant had a five percent impairment due to loss of function from decreased strength, as noted above, he failed to identify a grade of sensory deficit between one and five as set forth in the A.M.A., *Guides*¹³ and subsequently failed to properly explain how he calculated a five percent impairment using Table 15-18, page 424 of the A.M.A., *Guides*.¹⁴ Additionally, Dr. Miller also characterized the impairment in terms of whole body impairment. However, the Board notes that schedule awards for permanent impairment are not based on “total body” or whole person impairment as noted by the physician, but on impairment to a particular extremity. Dr. Miller neither provided his calculations in support of this determination nor did he correlate his findings to the A.M.A. *Guides*.¹⁵ As he did not provide calculations in conformance with the A.M.A., *Guides*, it was proper for an Office medical adviser to apply the A.M.A., *Guides* to the findings reported by Dr. Miller on examination.¹⁶

The medical adviser properly utilized the findings in Dr. Miller’s August 10, 2004 report, and correlated them to specific provisions in the A.M.A., *Guides* (5th ed.) to determine the impairment rating. The medical adviser determined that appellant sustained a six percent impairment of the left lower extremity. The Office medical adviser further noted that Table 15-15, 15-16 and 15-18 of the A.M.A., *Guides* provides guidance for evaluating spinal nerve root impairments. The Office medical adviser calculated that appellant had a five percent impairment of the left leg for sensory deficit or pain in the distribution of the S1 spinal nerve root under Table 15-18 of the A.M.A., *Guides*.¹⁷ He further calculated that appellant had a maximum sensory loss of 25 percent of the left leg, a Grade 4 pain in the distribution of the S1 spinal nerve root under Table 15-15.¹⁸ Impairment due to sensory loss was calculated as 1 percent impairment for the left lower extremity or leg by multiplying the 25 percent grade with the 5 percent maximum allowed for the S1 nerve. The Office medical adviser calculated that appellant had a 20 percent impairment of the left leg for loss of strength in the distribution of the S1 spinal nerve root under Table 15-18 of the A.M.A., *Guides*. He further calculated that he had a maximum power and motor deficit of 25 percent of the left leg, a Grade 4 pain in the distribution of the S1 spinal nerve root under Table 15-16.¹⁹ Impairment due to power and motor deficits

¹¹ A.M.A., *Guides*, *supra* note 6 at 424.

¹² A.M.A., *Guides*, *supra* note 5 at 424.

¹³ A.M.A., *Guides*, *supra* note 7 at 424.

¹⁴ A.M.A., *Guides*, *supra* note 5 at 424.

¹⁵ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

¹⁶ See *John L. McClenic*, 48 ECAB 552 (1997); *Lena P. Huntley*, 46 ECAB 643 (1995).

¹⁷ A.M.A., *Guides*, *supra* note 5 at 424.

¹⁸ A.M.A., *Guides*, *supra* note 6 at 424.

¹⁹ A.M.A., *Guides*, *supra* note 7 at 424.

was calculated as 5 percent impairment for the left lower extremity or leg by multiplying the 25 percent grade with the 20 percent maximum allowed for the S1 nerve. The medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Miller's report and reached an impairment rating of six percent for the left lower extremity. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a six percent impairment of the left lower extremity.

CONCLUSION

The Board finds that the Office properly determined that appellant had no more than a six percent impairment of the left lower extremity for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member