United States Department of Labor
Employees' Compensation Appeals Board

ANTHONY DANIELS, Appellant	)	
and	)	**Docket No. 05-1938**
	)	**Issued: February 14, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Indianapolis, IN, Employer	)	

Appearances:
Anthony Daniels, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 19, 2005 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated August 19, 2005, which denied modification of a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit schedule award decision in this case.

ISSUE

The issue is whether appellant has more than a six percent permanent impairment of his right and left lower extremities, for which he received a schedule award.

FACTUAL HISTORY

On July 17, 2000 appellant, then a 37-year-old letter carrier, filed a traumatic injury claim for injuries to his back and shoulders sustained when the vehicle he was driving was rear-ended by a semi-truck. The Office assigned file number A09-0468795 to the claim and accepted the conditions of cervical strain and lumbar sprain/spasm, later expanded to include the condition of a bulging disc at L4-5. On July 21, 2001 appellant underwent a decompressive laminectomy and

discectomy at L4-5 and a decompression and posterior lumbar interbody fusion with instrumentation at L5-S1. Appellant received appropriate compensation benefits and, following a course of temporary light duty, returned to full-time duties in December 2001.

The record reflects that appellant has a second claim under file number A09-409692. The Office accepted the conditions of left tarsal tunnel syndrome and left hallux rigidus aggravated by employment factors, for which appellant underwent a tarsal tunnel decompression surgery and a removal of left great toe osteophytes. Appellant received a schedule award for a 22 percent permanent impairment of his left foot and a 15 percent permanent impairment of his right foot.

In a March 27, 2002 letter, appellant requested a schedule award for permanent impairment to his lower extremities and submitted a report from his attending physician. In a February 14, 2002 report, Dr. Marc A. Levin, a Board-certified neurological surgeon, indicated that appellant reached maximum medical improvement as of January 10, 2002 and continued to have low back pain and lumbar radiculopathy secondary to his work-related injury. He advised that appellant had diminished range of motion in the lumbar spine and that straight leg raising was positive bilaterally at 80 degrees. Motor, sensory and reflex testing was reported as essentially normal. Dr. Levin opined that under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[1] (A.M.A., *Guides*) appellant had a 27 percent permanent impairment of the whole person.

In a February 25, 2002 report, the Office medical adviser noted the history of the July 17, 2000 work injury and advised that the Federal Employees' Compensation Act only allowed for impairment of the extremities, not for impairment of the axial skeleton or to the person as a whole. The Office medical adviser reviewed Dr. Levin's February 14, 2002 report in accordance with the A.M.A., *Guides* and determined that appellant had a six percent impairment to his right and left lower extremities based on a Grade three radicular pain in the distribution of the L5 and S1 nerve roots on each side.

In a July 21, 2003 letter, the Office requested clarification from the Office medical adviser as to whether the six percent impairment rating to appellant's lower extremities was in addition to the impairment rating previously awarded under claim number A09-409692. In a July 28, 2003 report, the Office medical adviser stated that his previous report of April 8, 2001 rated appellant's impairment for residuals of his low back condition while appellant's impairment rating in the previous claim concerned the foot. The Office medical adviser opined that the foot was a separate compensable member than the current lower extremity impairment and advised that such compensable conditions would be separate as there was no table in the A.M.A., *Guides*, which converted the foot into lower extremity impairment. The Office medical adviser opined that appellant had an additional six percent right leg impairment and an additional six percent left leg impairment.

[1] The A.M.A, *Guides* (5th ed. 2001).

By decision dated March 10, 2004, the Office issued a schedule award for a six percent right lower extremity impairment and a six percent left lower extremity impairment.[2] The period of the award ran for 34.56 weeks from March 10 to November 6, 2002.

On March 29, 2004 appellant disagreed with the amount of his schedule award and requested a hearing that was held on December 2, 2004. In a December 23, 2004 report, Dr. Levin advised that appellant continued to have pain, numbness and tingling and weakness in both lower extremities. He also opined that appellant had a three percent impairment to each leg based on the fifth edition of the A.M.A., *Guides*.

By decision dated February 22, 2005, an Office hearing representative affirmed the March 10, 2004 schedule award decision. The Office hearing representative found that Dr. Levin's report was not sufficient to change the award or require further development of the medical record.

In a May 19, 2005 letter, appellant disagreed with the February 22, 2005 decision and requested reconsideration. In a May 19, 2005 letter, Dr. Levin opined that he reexamined appellant and reviewed the A.M.A., *Guides*. He advised that appellant had an eight percent impairment to each lower extremity. Additional medical documentation surrounding a May 16, 2004 accident appellant had while driving a rental car was also submitted.

By decision dated August 19, 2005, the Office denied modification of the February 22, 2005 decision.

LEGAL PRECEDENT

Under section 8107 of the Act[3] and section 10.404 of the implementing federal regulation, schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[4]

[2] The Office additionally noted that the full amount of the schedule award of $18,752.60 was issued in error and should only have been for $11,360.86 as an overpayment existed in the amount of $7,391.74 due to appellant being paid at the wrong dependent rate. However, this is not in dispute on the present appeal and the Office has not issued a final overpayment decision prior to the filing of the instant appeal on September 19, 2005. *See* 20 C.F.R. § 501.2(c).

[3] 5 U.S.C § 8107.

[4] *See Joseph Lawrence, Jr.*, 53 ECAB 331 (2002); *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

The Board has long held that a schedule award is not payable under section 8107 of the Act for an impairment of the whole person.[5]

ANALYSIS

The Office medical adviser relied on the February 14, 2002 report from Dr. Levin, appellant's treating physician, in determining the extent of appellant's permanent partial impairment to the lower extremities.

The Office medical adviser noted that Dr. Levin reported the date of maximum medical improvement as January 10, 2002, that appellant continued to experience low back pain and lumbar radiculopathy and had a 27 percent impairment of the person as a whole. However, as noted, the Act does not provide for schedule awards based on whole person impairment. Consequently, it was proper for the Office medical adviser to review Dr. Levin's findings and apply the relevant tables in the A.M.A., *Guides*, to arrive at an impairment rating under the Act for the right and left lower extremities.[6] Based on the fifth edition of the A.M.A., *Guides*, the Office medical adviser found that appellant had a Grade three radicular pain due to the involvement of the L5 and S1 nerve roots on each side, which equated to a six percent lower extremity impairment on each side.[7] Under Table 15-18 page 424, the L5 and the S1 nerve roots each have a five percent maximum loss of function due to sensory deficit or pain. Under Table 15-15 page 424, the upper limit of Grade 3 sensory deficit is a 60 percent sensory deficit. Thus, the L5 nerve root has a 3 percent impairment (60 percent times 5 percent) and the S1 nerve root has a 3 percent impairment (60 percent times 5 percent), which combine for a 6 percent total impairment to each lower extremity.[8] The Board finds that the medical adviser properly took Dr. Levin's findings and applied the A.M.A., *Guides* to these findings to arrive at the impairment determination.[9]

There is no medical evidence, in conformance with the A.M.A., *Guides*, to support impairment greater than six percent to both lower extremities. Although Dr. Levin submitted December 23, 2004 and May 19, 2005 reports, indicating that appellant had greater impairment than that awarded, the physician failed to provide any explanation for his eight percent impairment rating. He failed to cite to any of the applicable tables and figures in the A.M.A., *Guides*. Thus, Dr. Levin's reports are of diminished probative value as his reports do not evaluate permanent impairment of a schedule member of the body pursuant to the A.M.A., *Guides*. Appellant has not established that he has greater than six percent impairment of the

[5] *See Jacqueline S. Harris*, 54 ECAB 139 (2002); *Gordon G. McNeill*, 42 ECAB 140 (1990).

[6] Office procedures provide that, after obtaining all necessary medical evidence, the file should be reviewed by an Office medical adviser for an opinion concerning the nature and percentage of any impairment. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

[7] The Board notes that the proper tables to figure out the impairment due to appellant's L5 and S1 radicular pain are Tables 15-15 and 15-18 on page 424 of the A.M.A., *Guides*, as opposed to Table 15-17 on page 424 and Table 16-10 on page 482 of the A.M.A., *Guides* as cited by the Office medical adviser.

[8] A.M.A., *Guides* 604.

[9] *See Hollis L. Geary*, 40 ECAB 1175 (1989).

right lower extremity and six percent impairment of the left lower extremity, for which he has received a schedule award.

CONCLUSION

The Board finds that appellant does not have more than six percent permanent impairment of the right and left lower extremities, for which he received an award.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 19 and February 22, 2005 are affirmed.

Issued: February 14, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board