

On January 21, 2003 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his right and left lower extremities.

In a report dated May 3, 2004, Dr. D.J. Laganella, an osteopath, determined that appellant had a 28 percent whole person impairment as per diagnosis-related estimate (DRE) lumbar Category 5 pursuant to Table 15.3 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*). He calculated an additional 40 percent whole person impairment due to chronic pain and inability to return to his profession pursuant to Table 18.7 at page 584 of the A.M.A., *Guides*.

In a report dated December 26, 2004, an Office medical adviser found that appellant had a 10.50 percent impairment of his right lower extremity and a 1.25 impairment of his left lower extremity based on the A.M.A., *Guides*. He disagreed with Dr. Laganella's reliance on the DRE calculation, stating that his impairment rating was apparently based on examination findings of L5 and S1 nerve root involvement, L5 motor loss and L5 and S1 sensory weakness. Relying on the above findings from Dr. Laganella, the Office medical adviser concluded that, pursuant to Table 15-15, appellant had a Grade 4 sensory deficit at L5 and S1, and a Grade 4 motor deficit under Table 15-16. Using Table 15-18, the Office medical adviser noted that the maximum percentage loss due to sensory deficit for each L5 and S1 was 5 percent; and the maximum percentage loss for loss of strength at L5 was 37 percent. Based upon the previously noted grades, the Office medical adviser calculated a sensory impairment under these tables by multiplying 25 (the maximum percentage sensory deficit for Grade 4) times 5 percent for a 1.25 percent impairment in the right and lower extremity. The Office medical adviser then multiplied 25 (the maximum percentage for motor deficit) times 37 percent for a 9.25 percent right-sided motor impairment. He then added 1.25 percent to 9.25 percent for a total 10.50 percent impairment of the right lower extremity, in addition to the 1.25 percent impairment of the left lower extremity under the A.M.A., *Guides*.

On May 25, 2005 the Office granted appellant a schedule award for a 10.50 percent permanent impairment of the right lower extremity and a 1.25 percent impairment of the left lower extremity for the period September 7, 2003 to May 5, 2005, for a total of 34.56 weeks of compensation.

By letter dated June 21, 2005, appellant's attorney requested a hearing, which was held on December 21, 2005. Appellant did not submit any additional medical evidence.

In a decision dated March 1, 2006, an Office hearing representative affirmed the May 25, 2005 decision and denied appellant's claim for a greater additional award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

amount of compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.³

ANALYSIS

In this case, the Office medical adviser was able to utilize findings made by Dr. Laganella in his May 3, 2004 report. He relied on subsection 15.12, *Nerve Root and/or Spinal Cord*, Chapter 15 of the A.M.A., *Guides*, which indicates that the extent of any sensory and motor loss due to nerve impairment should be based on Tables 15-15 and 15-16. The medical adviser identified the maximum percentage loss for sensory deficit of the L5 nerve root as five percent. The Office medical adviser found that appellant had a Grade 4 sensory deficit under Table 15-15. He then multiplied the 5 percent maximum impairment times 25 to derive at a 1.25 percent sensory impairment to the right and left lower extremities. The medical adviser identified the maximum percentage loss for strength of the L5 nerve root as 37 percent. Using Table 15-16, the Office medical adviser found that appellant had a Grade 4 motor deficit, which provides a sensory deficit of 1 to 25 percent. He calculated 9.25 percent right-sided motor impairment by multiplying the 37 percent maximum impairment based on motor deficit times the 25 grade. The Office medical adviser then combined the 1.25 percent sensory impairment with the 9.25 percent motor impairment to find a total 10.50 impairment of the right lower extremity. He also found 1.25 percent impairment of the left lower extremity for sensory loss. The Office medical adviser properly determined that these findings applied to appellant's condition.

The only medical evidence appellant submitted in support of his schedule award was Dr. Laganella's May 2004 report, which found that appellant had a 68 percent whole person impairment. Impairment rating for the whole person is not provided for under the Act.⁴ In addition, Dr. Laganella based part of this rating on appellant's inability to return to his profession; the Board has held that the amount payable under a schedule award does not take into account such factors as the effect of impairment on lifestyle activities or wage-earning capacity.⁵ Accordingly, as there was no other probative medical evidence in establishing that appellant sustained any additional permanent impairment, the Board holds that the opinion of the Office medical adviser constituted sufficient medical rationale to support the Office's May 25, 2005 schedule award decision. Following the Office's decision, appellant requested a hearing but did not submit any additional medical evidence. The Board therefore affirms the Office hearing representative's March 1, 2006 decision, which affirmed the May 25, 2005 schedule award decision of the Office, granting appellant an award for a 10.5 percent permanent impairment to his right lower extremity and a 1.25 impairment for his left lower extremity.

² 5 U.S.C. § 8107(c)(19).

³ 20 C.F.R. § 10.404.

⁴ *Dennis R. Blackwell*, 41 ECAB 98 (1989).

⁵ *See Ruben Franco*, 54 ECAB 496 (2003).

As there is no other probative medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that appellant was not entitled to more than a 10.50 percent permanent impairment to his right lower extremity and a 1.25 impairment for his left lower extremity.

CONCLUSION

The Board finds that appellant has no more than a 10.50 percent permanent impairment to his right lower extremity and a 1.25 impairment for his left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2006 and May 25, 2005 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: October 10, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board