

related low back strain and paid appropriate compensation for periods of disability. Appellant later claimed a schedule award due to her accepted employment injury.

In a report dated October 22, 2001, Dr. David Weiss, an attending osteopath and Board-certified orthopedic surgeon, determined that appellant had an L5 radiculopathy, which extended from the back into the left leg. He determined that, according to the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), appellant had a 7 percent impairment of the left leg comprised of a 4 percent impairment for sensory loss associated with the L5 nerve and a 3 percent impairment associated with a “pain-related impairment” and an 11 percent impairment of the right leg comprising an 8 percent impairment for a right calf atrophy and a 3 percent impairment associated with a “pain-related impairment.”

In February 2003, the Office referred appellant to Dr. Gregory S. Maslow, a Board-certified orthopedic surgeon, for evaluation of any impairment. In a report dated February 18, 2003, Dr. Maslow indicated that appellant had a normal examination of the lower extremities, but also indicated that she had a herniated disc at L4-5, which was the cause of her back pain and left leg symptoms. He indicated that there was no objective evidence of impairment in either lower extremity but that appellant had an eight percent impairment of the whole person according to Table 15-3 of the A.M.A., *Guides*, a table which provided criteria for rating impairment due to lumbar spine.¹

In a report dated in May 2003, the Office district medical director indicated that the opinion of Dr. Maslow did not show that appellant had an employment-related permanent impairment to a schedule member.

The Office determined that there was a conflict in the medical evidence between Dr. Weiss and Dr. Maslow regarding appellant’s impairment and referred appellant to Dr. Howard Zeidman, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated November 6, 2003, Dr. Zeidman stated that appellant’s examination revealed that she did not have any residuals of her accepted low back strain and that she did not have any evidence of a lower extremity radiculopathy at the present time. He indicated that it was appropriate for Dr. Maslow to find that appellant had an eight percent impairment of the whole person according to Table 15-3 of the A.M.A., *Guides* because application of that table was appropriate for a person who formerly had a lower extremity radiculopathy.

In a report dated March 9, 2004, the Office district medical director indicated that the medical evidence established that appellant had three percent for a pain-related impairment under Figure 18-1 on page 574 of the A.M.A., *Guides*.²

¹ See A.M.A., *Guides* 384-85, Table 15-3. In a brief March 18, 2003 report, Dr. Maslow indicated that he felt the rating in his February 18, 2003 report was appropriate.

² See A.M.A., *Guides* 574, Figure 18-1.

By award of compensation dated May 12, 2004, the Office granted appellant a schedule award for a total impairment of both legs of three percent. The award ran for 8.64 weeks from July 1 to August 30, 2002.

By decision dated and finalized January 11, 2005, an Office hearing representative set aside the Office's May 12, 2004 decision indicating that Dr. Zeidman had not adequately explained his opinion.

The Office asked Dr. Zeidman to provide a supplemental report. In a response dated January 10, 2005, Dr. Zeidman stated that on examination in November 2003 appellant exhibited no objective findings in the lower extremities. He indicated that his impairment rating at that time related only to appellant's back and that she had no impairment of the lower extremities. In a report dated February 24, 2005, the Office district medical adviser stated that the opinion of Dr. Zeidman showed that appellant was not entitled to additional schedule award compensation.

By decision dated April 15, 2005, the Office determined that appellant did not establish that she has more than a total impairment of both legs of three percent, for which she received a schedule award. The Office indicated that the weight of the medical evidence regarding appellant's impairment rested with the opinion of Dr. Zeidman, the impartial medical specialist.

Appellant requested a review of the written record by an Office hearing representative and, by decision dated November 4, 2005, the Office hearing representative affirmed the Office's April 15, 2005 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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.⁵

Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁶ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *Id.*

⁶ 5 U.S.C. § 8123(a).

medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.⁷

ANALYSIS

The Office accepted that appellant sustained an employment-related low back strain and she received schedule award compensation for a total impairment of both legs of three percent. Appellant claimed that she was entitled to additional schedule award compensation. The Office found that appellant was not entitled to such additional compensation based on the opinion of Dr. Zeidman, a Board-certified orthopedic surgeon who served as an impartial medical examiner.

The Board finds that the Office properly determined that there was a conflict in the medical evidence regarding appellant's lower extremity impairment and properly referred appellant to Dr. Zeidman for an impartial medical examination. In a report dated October 22, 2001, Dr. Weiss, an attending osteopath and Board-certified orthopedic surgeon, determined that appellant had a 7 percent impairment of the left leg comprised of a 4 percent impairment for sensory loss associated with the L5 nerve and a 3 percent impairment associated with a "pain-related impairment" and an 11 percent impairment of the right leg comprised of an 8 percent impairment for a right calf atrophy and a 3 percent impairment associated with a "pain-related impairment." In contrast, Dr. Maslow, a Board-certified orthopedic surgeon who served as an Office referral physician, determined in a February 18, 2003 report that appellant had no permanent impairment of the lower extremities.⁸

The Board finds that the well-rationalized opinion of Dr. Zeidman showed that appellant has no more than a total impairment of both legs of three percent, for which she received a schedule award. In a report dated November 6, 2003, Dr. Zeidman stated that appellant's examination revealed that she did not have any residuals of her accepted low back strain and that she did not have any evidence of a lower extremity radiculopathy at the present time. In a report dated January 10, 2005, Dr. Zeidman noted that on examination in November 2003 appellant exhibited no objective findings in the lower extremities. He explained that his impairment rating at that time related only to appellant's back and that she had no impairment of the lower extremities.⁹

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she has more than a total impairment of both legs of three percent, for which she received a schedule award.

⁷ *William C. Bush*, 40 ECAB 1064, 1975 (1989).

⁸ Dr. Maslow indicated that appellant had an eight percent impairment of the whole person according to Table 15-3 of the A.M.A., *Guides*, but this was based on a back impairment, which is not compensable under the Act. See *Tomas Martinez*, 54 ECAB 623 (2003).

⁹ Dr. Zeidman had indicated that appellant had an eight percent impairment of the whole person. Schedule awards are not payable for whole person impairment. See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 4 and April 15, 2005 decisions are affirmed.

Issued: September 11, 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