

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

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**T.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Pittsburgh, PA, Employer**

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**Docket No. 07-1029  
Issued: August 13, 2007**

*Appearances:*  
*Jeffrey P. Zeelander, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 28, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated February 20, 2007. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has more than a one percent permanent impairment to his left lower extremity.

**FACTUAL HISTORY**

This is the third appeal before the Board. Appellant, a 50-year-old mail carrier, filed a claim for benefits on August 5, 1989, alleging that he injured his lower back as he walked up some stairs. The Office accepted the claim for subluxation and lumbosacral sprain with lumbosacral radiculitis. On December 31, 2001 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of his left lower extremity. By decisions dated September 18, 2002 and March 3, 2003, the Office denied appellant's claim for a schedule

award. In a decision dated October 1, 2003, the Board set aside the Office's September 18, 2002 decision.<sup>1</sup> The Board found that there was a conflict in the medical evidence between Dr. Rudolph Merick, appellant's treating physician and Board-certified internist, and Dr. Edward Williamson, the second opinion examiner and Board-certified neurologist, regarding whether appellant had any impairment based on his work-related injury. The Board remanded the case to the Office for referral to an impartial medical specialist to resolve the conflict in the medical evidence.

The Office referred appellant to Dr. Jack P. Failla, a Board-certified orthopedic surgeon, for a referee medical examination. In a January 22, 2004 report, Dr. Failla found that appellant had a 10 percent whole person impairment. In a report dated April 19, 2004, the Office medical adviser found that appellant had a 1 percent permanent impairment for the left lower extremity, finding that under Table 15-15 appellant had a Grade 4 deficit/sensory deficit of 25 percent, which equated to a 1 percent impairment under Table 15-18. By decision dated February 13, 2006, the Office granted appellant a schedule award for a one percent impairment of the left lower extremity. In a decision dated November 13, 2006,<sup>2</sup> the Board set aside the Office's February 13, 2006 decision. The Board noted that Dr. Failla had discussed appellant's condition pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, but did not refer to any applicable tables and charts in calculating appellant's impairment rating. In addition, the Board noted that the Office had improperly rendered appellant's impairment rating as a whole man impairment. The Board remanded the case to the Office for referral to Dr. Failla for a supplemental report for clarification and elaboration. The complete facts of this case are set forth in the Board's October 1, 2003 and November 13, 2006 decisions and are hereby incorporated by reference.

In a January 10, 2007 report, Dr. Failla stated:

"My assessment, at the time of my examination, and understanding what I believed to have been the statement of accepted facts were that of multiple lumbar injuries, etc., my opinion was based primarily on two components and not just the one percent for any residual radicular impairment regarding spinal nerves. My assessment was then based on the evaluation of the lumbar spine as stated in my report of Category II and lumbar Category III. The range of disability there was anywhere from 5 to 13 percent, and I fixated on a combination of considering the lumbar problem and the radicular problem as identified on page 424, Table 15-18, that there was probably only an additional 1 percent that was associated with the lumbar S1 symptomatology of occasional numbness.

"Although there appears to be some evidence of an element of spinal stenosis, one could not clearly identify significant radicular findings other than the absent ankle jerks and therefore S1 is impaired, primarily sensory. The muscle weakness is purely subjective and could not be clarified by objective testing. Therefore, I can now clarify to you that my total impairment rating was that of 10 percent, which

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<sup>1</sup> Docket No. 03-1097 (issued October 1, 2003).

<sup>2</sup> Docket No. 06-829 (issued November 13, 2006).

included not only the issues of impairment related to the lumbar spine injuries, but also probably a 1 percent affect involving S1.”

In a report dated February 10, 2007, the Office medical adviser found that appellant had a 1 percent permanent impairment for the left lower extremity, finding that under Table 15-15 appellant had a Grade 4 deficit/sensory deficit of 25 percent, which rated a 1 percent impairment under Table 15-18.

On February 20, 2007 the Office found that appellant was not entitled to more than a one percent impairment of the left lower extremity.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act<sup>3</sup> 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 amount of compensation is paid in proportion to the percentage loss of use.<sup>4</sup> 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.<sup>5</sup>

### **ANALYSIS**

In this case, Dr. Failla, the impartial specialist, calculated a one percent impairment based on sensory/radicular loss at S1 pursuant to page 424, Table 15-18. The Office medical adviser took Dr. Failla’s findings of a minimal sensory deficit at S1 and applied them to Table 15-15, which determines impairment due to sensory loss. He multiplied the maximum deficit for a Grade 4 impairment, 25 percent, based on motor deficit under Table 15-15 by 5 percent, the amount of impairment he rated at Table 15-18, for a 1.25 percent left lower extremity impairment.

There is no other probative medical evidence establishing that appellant sustained any additional permanent impairment. The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to rate appellant’s left lower extremity impairment. His report constitutes the weight of medical opinion.

The Board will affirm the Office’s February 20, 2007 decision granting appellant a schedule award for a one percent permanent impairment to his left lower extremity.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>4</sup> 5 U.S.C. § 8107(c)(19).

<sup>5</sup> 20 C.F.R. § 10.404.

**CONCLUSION**

The Board finds that appellant has no more than a one percent permanent impairment to his left lower extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 20, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 13, 2007  
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