

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

V.B., Appellant

and

**U.S. DISTRICT COURT, CLERK'S OFFICE,
Seattle, WA, Employer**

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**Docket No. 07-498
Issued: July 25, 2006**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 13, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 15, 2006 with respect to a schedule award. Pursuant to 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 10 percent permanent impairment to her right leg, for which she received a schedule award.

FACTUAL HISTORY

On September 11, 2004 appellant filed a traumatic injury claim (Form CA-1) alleging that she sustained a right leg injury when she tripped and fell on September 2, 2004 while in the performance of duty. The Office accepted the claim for a right leg laceration. The medical evidence indicated that appellant underwent debridement and repair of the laceration on

September 2, 2004 by Dr. Thomas Green, an orthopedic surgeon, and on October 6, 2004 by Dr. Kevin Beshlian, a plastic surgeon.

In a report dated March 1, 2006, Dr. Abid Haq, an internist, provided a history and results on examination. He noted significant ongoing pain in the right leg that was controlled by medication. Dr. Haq also noted decreased sensation on the anterior portion of the leg lateral to the scar. He opined that appellant had reached maximum medical improvement. With respect to the degree of permanent impairment, Dr. Haq identified Table 17-36 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He stated that appellant had a five percent impairment based on limited kneeling. In addition, Dr. Haq identified Table 17-37 and the common peroneal nerve. He found that appellant had an additional five percent impairment for sensory loss. According to Dr. Haq, combining the impairments under the Combined Values Chart resulted in nine percent leg impairment.

The case was referred to an Office medical adviser for review. In a report dated April 20, 2006, the medical adviser reviewed Dr. Haq's report. The medical adviser stated that he agreed with the impairment rating examination, but not the final impairment number, because 5 combined with 5 results in 10 percent impairment under the Combined Values Chart. The medical adviser also noted that Dr. Haq did not discuss Table 16-10 in grading the sensory loss in the common peroneal nerve. With respect to maximum medical improvement, the medical adviser opined that this occurred on March 1, 2006.

By decision dated May 24, 2006, the Office issued a schedule award for 10 percent impairment to the right leg. The period of the award was 28.80 weeks from March 1, 2006.

Appellant requested a review of the written record on June 21, 2006. She submitted a June 21, 2006 report from Dr. John W. Roberts, a neurologist, who stated that the right leg injury had resulted in chronic reduced sensation and neuropathic pain on the right leg. Dr. Roberts did not provide an opinion as to the degree of permanent impairment.

By decision dated September 15, 2006, the Office hearing representative affirmed the May 24, 2006 schedule award decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulation specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.²

ANALYSIS

Appellant received a schedule award for a 10 percent permanent impairment to the right leg. The degree of impairment is, as noted above, determined by the applicable provisions of the A.M.A., *Guides*. Dr. Haq identified Table 17-36, which provides impairments for skin loss.³ According to Table 17-36, tibial tuberosity covering which limits kneeling is five percent leg impairment. Both Dr. Haq and the Office medical adviser concurred in finding five percent impairment based on skin loss.

Dr. Haq also identified Table 17-37, which provides impairments due to nerve deficits. For the common peroneal nerve, the maximum impairment for sensory deficit or pain is five percent.⁴ The impairment is graded pursuant to Table 16-10.⁵ Although Dr. Haq did not specifically discuss Table 16-10, he did note significant pain and sensory deficit in his report. The Office medical adviser did not disagree with Dr. Haq or offer a different impairment based on nerve deficit. The weight of the probative evidence, therefore, indicated that appellant had an additional five percent impairment for common peroneal nerve deficit.

As noted by the Office medical adviser, combining 5 and 5 under the Combined Values Chart results in 10 percent leg impairment.⁶ Accordingly, the Board finds that the probative evidence of record does not establish greater than a 10 percent right leg impairment in this case.

The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the leg, the maximum number of weeks of compensation is 288 weeks. Since appellant's impairment was 10 percent, she is entitled to 10 percent of 288 weeks or 28.80 weeks of compensation. It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.⁷ In this case, the Office medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Haq. The award, therefore, properly runs for 28.80 weeks commencing on March 1, 2006.

² A. George Lampo, 45 ECAB 441 (1994).

³ A.M.A., *Guides* 550, Table 17-36.

⁴ *Id.* at 552, Table 17-37.

⁵ *Id.* at 482, Table 16-10.

⁶ *Id.* at 604, Combined Values Chart. This chart was designed to account for the effects of multiple impairments with a summary value that does not exceed 100 percent. In this case, combining the impairments results in the same impairment as adding the impairments.

⁷ Albert Valverde, 36 ECAB 233, 237 (1984).

On appeal, appellant questioned why the Office did not discuss the reports of Dr. Beshlian, who performed the October 6, 2004 debridement surgery and was an attending physician. The issue in this case is the degree of right leg permanent impairment under the A.M.A., *Guides*. There are no medical reports from Dr. Beshlian in the record providing an opinion regarding a permanent impairment in the right leg.

CONCLUSION

The evidence does not establish more than a 10 percent right leg permanent impairment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 15 and May 24, 2006 are affirmed.

Issued: July 25, 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