United States Department of Labor
Employees' Compensation Appeals Board

S.T., Appellant	)	
and	)	**Docket No. 07-430**
	)	**Issued: June 6, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

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 December 6, 2006 appellant filed a timely appeal from the October 16 and November 21, 2006 merit decisions of the Office of Workers' Compensation Programs which awarded schedule compensation and denied a recurrent pay rate. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of those decisions.

ISSUES

The issues are: (1) whether appellant has more than a six percent permanent impairment of his right lower extremity or more than an 11 percent permanent impairment of his left; and (2) whether he is entitled to a recurrent pay rate in April 1993.

FACTUAL HISTORY

On July 2, 1988 appellant, then a 38-year-old regular maintenance mechanic, MPE (mail processing equipment), sustained an injury in the performance of duty: "I was walking to pick up some bad carts on the 4th floor to take back to cart room on 5th floor when my left leg started

to bother me." He stopped work that day. The Office accepted his claim for aggravation of preexisting lumbar strain.[1]

Appellant received compensation for temporary total disability on the periodic rolls. In September 1991, he returned to a permanent modified mechanic assignment working four hours a day. On April 28, 1993 appellant became totally disabled for work due to an effective change in his limited duty. In October 1994, he returned to a modified maintenance mechanic, MPE assignment working four hours a day and resumed full-time work the following month.

On November 17, 2005 appellant filed a claim for a schedule award. On March 21, 2006 Dr. George L. Rodriquez, a Board-certified physiatrist, evaluated appellant and made findings on physical examination. He calculated a 6 percent impairment of the right lower extremity due to 25 percent deficits in the L5 sensory and S1 motor nerve roots. Dr. Rodriquez found an 11 percent impairment of the left lower extremity due to 25 percent deficits in the L5 sensory, L3 motor and S1 motor nerve roots. On August 18, 2006 an Office medical adviser reviewed Dr. Rodriguez' clinical findings and agreed with the impairment ratings given for the lower extremities.

On October 16, 2006 the Office issued a schedule award for a 6 percent permanent impairment of appellant's right lower extremity and an 11 percent impairment of the left.

On November 5, 2006 appellant requested reconsideration:

> "Reconsideration is premised upon the pay rate used in this case. The decision relates a 1988 pay rate. However, [appellant] had resumed working full time for more than six months when he had an approved [r]ecurrence for the period commencing April 28, 1993. Therefore, the pay rate on his schedule award should be based upon that April 28, 1993 pay rate, not the 1988 pay rate."

In a decision dated November 21, 2006, the Office reviewed the merits of appellant's claim and found no evidence to support entitlement to a recurrent pay rate. This appeal followed.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Federal Employees' Compensation Act[2] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[3]

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[1] The Office later accepted a prolonged depressive reaction and lumbago.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001).

ANALYSIS -- ISSUE 1

Dr. Rodriguez, appellant's physiatrist, properly followed the procedure and grading scheme set out in the A.M.A., *Guides* for evaluating impairment due to spinal nerve root compression.[4] He identified the nerve involved, graded the sensory and motor deficit in the nerve and multiplied that percentage by the maximum impairment the nerve can cause. On the right, he noted a sensory deficit of the L5 nerve root. The most an L5 nerve root can impair the lower extremity due to sensory deficit or pain is five percent.[5] As Dr. Rodriguez judged the sensory deficit of the L5 nerve to be 25 percent,[6] the proportionate lower extremity impairment due to the nerve's sensory deficit is 25 percent times 5 percent or 1.25 percent which rounds to 1 percent.

Dr. Rodriguez also found a motor deficit of the S1 spinal nerve root. He multiplied the motor deficit of the S1 nerve (25 percent)[7] by the maximum motor impairment that nerve can cause (20 percent)[8] and determined that appellant had a 5 percent impairment of the right lower extremity due to motor deficit.

If there is both sensory and motor impairment of a nerve root, the impairments are combined using the Combined Values Chart on page 604 of the A.M.A., *Guides*, to determine the extremity impairment.[9] A one percent impairment due to sensory deficit combines with a five percent impairment due to motor deficit for a six percent total impairment of the right lower extremity. This is what the Office awarded.

Dr. Rodriguez found the same impairments on the left. In addition, he found a motor deficit of the L3 spinal nerve root. Dr. Rodriguez multiplied the motor deficit of the L3 nerve (25 percent) by the maximum motor impairment that nerve can cause (20 percent) and determined that appellant had a 5 percent impairment of the left lower extremity due to motor deficit in the L3 nerve root.

Impairment due to both S1 and L3 motor deficits is 10 percent which combines with a 1 percent impairment due to the L5 sensory deficit for an 11 percent total impairment of the left lower extremity. This is what the Office awarded.

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[4] A.M.A., *Guides* 423.

[5] *Id*. at 424 (Table 15-18).

[6] *Id.* (Table 15-15). A sensory deficit of one to 25 percent is classified as Grade 4: distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity.

[7] *Id*. (Table 15-16). A motor deficit of 1 to 25 percent is classified as Grade 4: active movement against gravity with some resistance.

[8] *Id*. (Table 15-18).

[9] *Id*. at 423.

The Board will affirm the Office's October 16, 2006 schedule award on the percentage of impairment to each lower extremity. The Office correctly applied standardized procedures to the clinical findings reported and properly determined appellant's impairment due to spinal nerve root compressions.

LEGAL PRECEDENT -- ISSUE 2

Monetary compensation for total or partial disability due to an employment injury is paid as a percentage of monthly pay.[10] Section 8101(4) of the Act provides that "monthly pay" means the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater.[11]

ANALYSIS -- ISSUE 2

Because appellant's disability began at the time of injury, the first two pay rates are the same. The only other pay rate he could possibly receive under section 8101(4) of the Act is the pay rate at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States. Appellant contends that such a situation took place on April 28, 1993 when he sustained a recurrence of disability after more than six months' full-time employment.

The record does not show that appellant worked full time before his April 28, 1993 recurrence. Following his July 1988 employment injury, appellant remained totally disabled until he returned to limited duty working four hours a day in September 1991. Appellant did not return to full-time work until November 1994, in a limited-duty assignment that began the prior month.[12] As the record does not support appellant's claim that he is entitled to a recurrent pay rate effective April 1993, the Board will affirm the Office's November 21, 2006 decision and the October 16, 2006 schedule award on the issue of rate of pay.

CONCLUSION

The Board finds that appellant has no more than a 6 percent permanent impairment of his right lower extremity and no more than an 11 percent impairment of his left. The Board also finds that he is not entitled to the recurrent pay rate.

[10] 5 U.S.C. §§ 8105, 8106.

[11] *Id.* § 8101(4); *John D. Williamson*, 40 ECAB 1179 (1989).

[12] Part-time work aside, the fact that appellant worked limited duty in a permanent assignment created especially to accommodate his particular medical restrictions and did not perform all the duties of a regular maintenance mechanic, raises a substantial question whether, for purposes of receiving a recurrent pay rate, he ever returned to "regular" employment following his 1998 employment injury. *See generally Jeffrey T. Hunter*, 52 ECAB 503 (2001).

ORDER

IT IS HEREBY ORDERED THAT the November 21 and October 16, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 6, 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