

Approximately a year after her injury, she returned to light-duty work four hours a day and worked until November 2005, when she stopped work due to a nonemployment-related renal disability.

On July 26, 2006 appellant filed a claim for a schedule award. In a September 5, 2006 report, Dr. George Rodriguez, a Board-certified physiatrist, noted the history of injury and appellant's medical treatment. He noted that magnetic resonance imaging (MRI) scan studies of the lumbar spine diagnosed disc herniations of L4-5 and L5-S1 and electromyogram (EMG) studies of both lower extremities demonstrated bilateral nerve involvement. Dr. Rodriguez reported that the neurological examination revealed intact sensation to light touch throughout all dermatomes and nerve distributions. He diagnosed lumbosacral strain/sprain, lumbar herniated nucleus pulposus (HNP) at L4-5 and L5-S1, sacral radiculopathy and gait abnormality (by history) as conditions secondary to the work-related injury. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*), Dr. Rodriguez evaluated appellant's impairment and opined that she had an eight percent right lower extremity impairment and an eight percent left lower extremity impairment. Under Table 16-10, page 482 and Table 15-18, page 424 of the A.M.A., *Guides*, he found that appellant's S1 nerve root had a Grade 3 or 60 percent deficit of the maximum 5 percent lower extremity impairment which resulted in 4 percent impairment for both the right and left lower extremities.¹

By memorandum dated October 2, 2006, the Office asked an Office medical adviser to review the medical evidence on file for schedule award entitlement. On October 15, 2006 the Office medical adviser determined that appellant had one percent impairment of each lower extremity. He reported that appellant reached maximum medical improvement on September 5, 2006. Under Table 15-15, page 424 of the A.M.A., *Guides*, the Office medical adviser found that Dr. Rodriguez's neurological examination finding that "sensation was intact to the light touch throughout all dermatomes and nerve distributions" was more representative of a Grade 4 or 25 percent sensory deficit as opposed to Dr. Rodriguez's determination of a Grade 3 or 60 percent sensory deficit. Accordingly, under Table 15-15, page 424 and Table 15-18, page 424 of the A.M.A., *Guides*, he opined that appellant's S1 nerve root had a Grade 4 or 25 percent deficit of the maximum 5 percent lower extremity impairment which resulted in 1.25 percent impairment for both the right and left lower extremities.

By decision dated October 31, 2006, the Office granted a schedule award for one percent impairment of the right lower extremity and one percent impairment of the left lower extremity. The period of the award ran for 5.76 weeks, from September 5 to October 28, 2006.

¹ The Board notes that Dr. Rodriguez's calculation contains a mathematical error as a proper calculation would result in a 3 percent impairment to each lower extremity (60 percent of 5 percent equals 3 percent). While Dr. Rodriguez also proposed an alternative method for calculating impairment, he stated that the method was not used as there was no precedent in the A.M.A., *Guides* to support such a calculation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set 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.⁴

A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulation.⁵ Neither the Act nor its regulation provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole.⁶ The Board notes that section 8109(19) specifically excludes the back from definition of organ.⁷ However, a claimant may be entitled to a schedule award for permanent impairment to a scheduled member or organ even though the cause of the impairment originates in the neck, shoulders or spine.⁸

Office procedures provide that, after obtaining all necessary medical evidence, the file should be reviewed by an Office medical adviser for an opinion concerning the nature and percentage of any impairment.⁹

ANALYSIS

Dr. Rodriguez reported that appellant's neurological examination revealed intact sensation to light touch throughout all dermatomes and nerve distributions. The Office medical adviser found that Dr. Rodriguez's neurological examination did not justify his proposed Grade 3 calculation and determined instead that appellant had a Grade 4 or 25 percent S1 nerve root deficit of sensory loss under Table 15-15 of the A.M.A., *Guides*. Under Table 15-15 of the A.M.A., *Guides*, a Grade 3 classification is defined as "a distorted superficial tactile sensibility (diminished light touch and two-point discrimination), with some abnormal sensations or slight

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Id.*

⁵ See *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁶ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

⁷ 5 U.S.C. § 8107; see also *Phyllis F. Cundiff*, 52 ECAB 439 (2001); *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

⁸ 5 U.S.C. § 8109(c).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

pain, that interferes with some activities.” A Grade 4 classification is defined as “distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity.” The Board has recognized that an attending physician, who has an opportunity to examine appellant, is often in a better position to make certain judgments regarding schedule awards.¹⁰ Dr. Rodriguez, however, did not provide any reasoning to explain why he selected a Grade 3 sensory deficit in light of his stated findings. The Office medical adviser explained that the neurological findings outlined by Dr. Rodriguez more appropriately fit into a Grade 4 sensory deficit. The Board finds that the Office medical adviser provided adequate reasoning for his grade selection and that the medical adviser’s opinion, with supporting reasons, justifies selecting a Grade 4 sensory deficit of the S1 nerve root.

The Office medical adviser also properly evaluated appellant’s impairment under the A.M.A., *Guides*. Based on Table 15-18, page 424 of the A.M.A., *Guides*, the Office medical adviser noted that the S1 nerve root maximum percent loss of function due to sensory deficit or pain is five percent. Under Table 15-15, page 424, he determined that appellant had a Grade 4 or 25 percent sensory loss and multiplied that by the 5 percent maximum value of the S1 nerve to find 1.25 percent which was rounded to 1 percent impairment for both the right and left legs.¹¹

There is no other evidence of record, conforming with the A.M.A., *Guides*, indicating that appellant has any greater impairment. The Board finds that appellant has no more than a one percent impairment of the right and left lower extremities.

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 a total, or 100 percent loss of use of a leg, an employee shall receive 288 weeks of compensation.¹² Therefore, appellant was entitled to one percent for each extremity, or 5.76 weeks. This conforms with the schedule award appellant received.

CONCLUSION

The Board finds that appellant has no more than one percent impairment of her right lower extremity and one percent impairment for her left lower extremity for which she received a schedule award.

¹⁰ See *Richard Giordano*, 36 ECAB 134, 139 (1984); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (August 2002). The procedure manual notes that, when the A.M.A., *Guides*, ask for a percentage within a range, the physician may be asked why he assigned a particular percentage of impairment.

¹¹ See *Marco A. Padilla*, 51 ECAB 202 (1999); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter, 3.700.3.b. (October 1990) (the policy of the Office is to round the calculated percentage of impairment to the nearest whole point).

¹² 5 U.S.C. § 8107(c)(2).

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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