United States Department of Labor
Employees' Compensation Appeals Board

G.R., Appellant	)	
and	)	**Docket No. 07-1973**
	)	**Issued: January 14, 2008**
DEPARTMENT OF THE ARMY, ENGINEERING & MAINTENANCE OPERATIONS, Fort Sam Houston, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 23, 2007 appellant filed a timely appeal from the June 28, 2007 merit decision of the Office of Workers' Compensation Programs which awarded schedule compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the schedule award.

ISSUE

The issue is whether appellant has more than a 5 percent impairment of his left lower extremity or more than an 11 percent impairment of his left upper extremity.

FACTUAL HISTORY

On February 15, 2005 appellant, then a 51-year-old sheet metal mechanic, sustained an injury in the performance of duty: "While cutting twisted metal beams, one of the steel beams sprung up. I jumped to avoid the beam. I fell backwards on asphalt ground." The Office

accepted appellant's claim for neck sprain/strain; lumbar sprain/strain; bilateral sprain/strain of shoulder/upper arm, not otherwise specified; left elbow/forearm sprain/strain, not otherwise specified. The Office also accepted degeneration of the C4 disc; C4 disc disorder with myelopathy; cervical spinal stenosis; cervical spinal stenosis with myelopathy; and lumbar spinal stenosis. On October 14, 2005 appellant underwent an anterior cervical discectomy and Rabea spacer fusion at C3-6 and anterior tether plating from C3-6.

On November 8, 2006 Dr. Arnulfo R. Garza-Vale, appellant's neurosurgeon, offered an impairment rating:

> "Based on [appellant's] myelopathy that he has in his cervical spine with two areas of hyperintensity documented and clinically positive spasticity, ataxia, weakness and burning in both upper extremities, as well as his spinal stenosis in his lower back, according to the [f]ifth [e]dition [of the] A[merican] M[edical] A[ssociation,] *Guides to the Evaluation of Permanent Impairment* page 336, section 13.5, he has essentially a Class III spinal cord injury and, therefore, in my opinion, rates at least 25 percent disability, whole body. Based on his lower back condition of a foot drop with numbness in the leg, page 424, section 15.18 for sensory and 15.16 for motor, [appellant] has a Grade 3 sensory deficit for about a two percent impairment rating, Grade 4 for the foot drop he has on the left leg for a three percent motor deficit, for a total of five percent. [Appellant's] range of motion is normal; hence, no impairment for that.
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> "My impression is that [appellant] has a 30 percent total body impairment rating, permanent disability, based on the A.M.A., *Guides*, 5th ed. for his neck and back."

On January 9, 2007 an Office medical adviser reported that Dr. Garza-Vale did not describe appellant's condition adequately to allow an impairment rating. The Office referred appellant to Dr. Patrick W. Mulroy, a physiatrist, for a second opinion. On February 7, 2007 Dr. Mulroy described appellant's complaints and his findings on physical examination. He offered the following assessment:

> "Impairment rating in this case is quite difficult to quantify. [Appellant's] treating surgeon documents a left foot drop and increased spasticity involving the lower extremities bilaterally. I found no evidence of increased deep tendon reflexes involving the lower extremities bilaterally pointing to a significant cervical myelopathy. I also saw no significant objective evidence of atrophy involving the upper or lower extremities bilaterally. [Appellant] does not ambulate with a foot slap or any significant other gait abnormalities indicating gross unilateral motor deficits. [Dr. Garza-Vale,] in this case, gave [appellant] 25 percent whole person disability based on gait disorders on p[age] 336 of the [A.M.A.,] *Guides*. Unfortunately, this type of impairment rating is not accepted by the [Office]. [Dr. Garza-Vale] goes on to document objective evidence of motor and sensory deficits involving the left leg yielding two percent impairment for sensory deficits and three percent impairment of the lower extremity for motor deficits that mirror my physical findings on today's visit. Therefore, [appellant] will receive five percent impairment of the lower extremity secondary to sensory

and motor deficits either from the cervical or the lumbar pathology. In addition, [he] has significant weakness involving the left C6 myotome associated with deficits in the C6 dermatome. Impairment for the left C6 motor weakness was calculated using [T]able 15-16/17 on page 424. Twenty five percent motor deficit was multiplied by 35 percent maximum percent loss of function yielding 8.75 percent upper extremity impairment. This impairment was rounded up so that appellant] will receive nine percent upper extremity impairment. [He] also has a C6 dermatome deficit of 25 percent. Twenty-five percent of eight percent yields two percent impairment secondary [to] sensory deficit. Combining 9 percent impairment secondary to motor deficit with 2 percent impairment secondary to sensory deficit yields a 10 percent impairment of the upper extremity secondary to C6 dermatomal and myotomal dysfunction.

"In summary, [appellant] will receive 5 percent impairment of the left lower extremity and 10 percent impairment for the left upper extremity secondary to his on the job injuries.

"No impairment will be given for the other [accepted] conditions, including bilateral shoulder sprains and left elbow pain."

On April 11, 2007 an Office medical adviser reviewed Dr. Mulroy's evaluation. As to the left upper extremity, he noted that a 9 percent motor impairment combined with a 2 percent sensory impairment of 11 percent impairment not 10 percent as Dr. Mulroy reported.

On June 28, 2007 the Office issued a schedule award for a five percent impairment of the left lower extremity and an 11 percent impairment of the left upper extremity. On appeal, appellant states that Dr. Garza-Vale determined his impairment to be 30 percent using the A.M.A., *Guides*. Dr. Garza-Vale notes that [appellant] has permanent spinal cord damage and has chronic pain 24 hours a day. He also notes that he has spinal stenosis L4-L5 with a left-sided disc protrusion that will require surgery.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[1] 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 A.M.A., *Guides*.[2]

To support a schedule award, the file must contain competent medical evidence that describes the impairment in sufficient detail for the adjudicator to visualize the character and

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001).

degree of disability.[3] The report of the examination must always include a detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment.[4] The Office should advise any physician evaluating permanent impairment to use the fifth edition of the A.M.A., *Guides* and to report findings in accordance with those guidelines.[5]

The Act does not authorize the payment of schedule awards for the permanent impairment of the "whole person."[6] Payment is authorized only for the permanent impairment of specified members, organs or functions of the body.

No schedule award is payable for a member, organ or function of the body not specified in the Act or in the regulations.[7] Because neither the Act nor the regulations authorize a schedule award for impairment to the back, no claimant is entitled to such an award.[8] Indeed, the Act specifically excludes the back from the definition of "organ."[9]

Amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. As the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.[10]

ANALYSIS

The 30 percent impairment rating given by Dr. Garza-Vale, the attending neurosurgeon, is not dispositive of appellant's entitlement to compensation. The Office may not issue schedule awards for "whole body" or "total body" impairments. The statute authorizes schedule awards only for impairments to specified members, organs or functions of the body, such as the lower and upper extremities.

Dr. Garza-Vale noted that the spinal cord injury was affecting appellant's station and gait (ambulation). Appellant may not receive an award for impairment to his spine or back *per se*,

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[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.b(2) (August 2002).

[4] *Id*., Chapter 2.808.6.c(1).

[5] *Id*., Chapter 2.808.6.a (noting exceptions).

[6] *Ernest P. Govednick*, 27 ECAB 77 (1975).

[7] *William Edwin Muir*, 27 ECAB 579 (1976).

[8] *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).

[9] 5 U.S.C. § 8101(19).

[10] *Rozella L. Skinner*, 37 ECAB 398 (1986).

but may receive an award for lower limb impairment due to gait derangement,[11] even though the cause of the impairment originates in the spine. However, the A.M.A., *Guides* cautions against such ratings: "Whenever possible, the evaluator should use a more specific method."[12] Dr. Garza-Vale effectively did both. He found a 25 percent "whole body" impairment due to the effect of the spinal cord injury on appellant's station and gait and added that to the unilateral spinal nerve root impairments (sensory and motor) affecting the lower extremity. The A.M.A., *Guides* notes that such combinations are not allowed: "Lower limb impairment percents [due to gait derangement] stand alone and are not combined with any other impairment evaluation method."[13]

Dr. Mulroy, the second opinion physiatrist, agreed with Dr. Garza-Vale's more specific rating for sensory and motor deficits affecting the lower extremities. Dr. Garza-Vale reported a Grade 3 sensory deficit, "for about a two percent impairment rating" of the left lower extremity. This is supported by grading scheme and procedure set forth in Table 15-15, page 424 of the A.M.A., *Guides*. Dr. Garza-Vale also reported a Grade 4 motor deficit, for a three percent impairment of the left lower extremity. The grading scheme and procedure set forth in Table 15-16 supports such a rating from an impaired S1 nerve root. Dr. Mulroy and Dr. Garza-Vale both agreed, therefore, that appellant has a five percent total impairment of the left lower extremity due to unilateral spinal nerve root impairments which is what the Office awarded.

Dr. Mulroy also found that appellant had a unilateral spinal nerve root impairment affecting the left upper extremity. Using the grading scheme and procedure set forth in Table 15-16, page 424 of the A.M.A., *Guides*, he multiplied appellant's 25 percent motor deficit (Grade 4) by the 35 percent maximum loss of motor function due to an impaired C6 to find a left upper extremity impairment of 9 percent. Using the grading scheme and procedure set forth in Table 15-15, Dr. Mulroy multiplied appellant's 25 percent sensory deficit (also Grade 4) by the 8 percent maximum loss of sensory deficit or pain due to an impaired C6 nerve root to find a left upper extremity impairment of 2 percent. If there is both sensory and motor impairment of a nerve root, the impairment percents are combined.[14] Using the Combined Values Chart on page 604 of the A.M.A., *Guides*, a 9 percent impairment combines with a 2 percent impairment for a total impairment of 11 percent, which is what the Office awarded for the left upper extremity.

CONCLUSION

The Board finds that appellant has no more than a 5 percent impairment of his left lower extremity or more than an 11 percent impairment of his left upper extremity. The Office could not use Dr. Garza-Vale's "whole body" or "total body" impairment ratings but did properly apply the A.M.A., *Guides* to the more specific impairment methods used by both Dr. Garza-Vale and Dr. Mulroy. The Board will therefore affirm the June 28, 2007 schedule award.

[11] A.M.A., *Guides* 529.

[12] *Id*.

[13] *Id*.; *see also id.* at 526 (Table 17-2).

[14] *Id*. at 423.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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