United States Department of Labor
Employees' Compensation Appeals Board

D.W., Appellant	)	
and	)	**Docket No. 08-301**
	)	**Issued: May 21, 2008**
DRUG ENFORCEMENT ADMINISTRATION, Lake Havasu City, AZ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 7, 2007 appellant filed a timely appeal from the September 24, 2007 decision of the Office of Workers' Compensation Programs granting a schedule award for three percent impairment of each lower extremity. 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 three percent impairment of each lower extremity, for which he received a schedule award.

FACTUAL HISTORY

On September 5, 2006 appellant, then 41-year-old criminal investigator, filed a traumatic injury claim alleging that he injured his lower back while swinging a 50-pound metal ram to breach the door of a search warrant location on May 31, 2006. An August 31, 2006 magnetic resonance imaging (MRI) scan revealed a large right paracentral disc extrusion and moderate central canal stenosis with impingement of the right L5 and S1 nerve roots at L5-S1 and mild

disc degeneration and a small central disc protrusion at L1-2. On September 8, 2006 Dr. Abhay Sanan, a Board-certified neurological surgeon, reported that appellant experienced low back pain beginning in May 2006 with severe leg pain and numbness beginning in August 2006. Based on appellant's objective findings, he recommended surgery. On September 15, 2007 appellant underwent a right L5-S1 lumbar microdiscectomy. On January 26, 2007 the Office accepted his claim for lumbar sprain, lumbosacral radiculitis and an L5-S1 herniated nucleus pulposus.

On February 2, 2007 appellant filed a claim for a schedule award. In an April 24, 2007 report, Dr. Sanan stated that appellant had persistent postoperative pain in his right buttock. Appellant experienced numbness in his right calf, aching in his left heel and numbness in his second and third toes. Dr. Sanan indicated that this condition was very likely permanent. On physical examination he found that appellant had normal gait and station, full lower extremity motor function bilaterally and deep tendon reflexes that were symmetrical at the knees and absent at the ankles. Dr. Sanan stated that appellant had sustained 10 percent whole person impairment under the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

On May 23, 2007 the Office requested that an Office medical adviser determine appellant's permanent impairment for schedule award purposes. In a report dated June 7, 2007, Dr. Arthur Harris, a Board-certified orthopedic surgeon and Office medical consultant, noted that the record forwarded to him was incomplete as there were no medical reports documenting appellant's current condition and residual symptoms.

On July 18, 2007 the Office provided Dr. Harris with Dr. Sanan's April 24, 2007 report. Dr. Harris noted that appellant was status post right L5-S1 discectomy and had residual pain in the lumbar spine with numbness and tingling in both lower extremities. Appellant had no motor weakness, atrophy or reflex asymmetry. In rating impairment due to pain, Dr. Harris noted that under Table 16-10, page 482, appellant had a Grade 3 sensory deficit for pain that interfered with some activity for which up to 60 percent deficit was allowed.[1] He utilized Table 15-18, page 424, to find that the maximum impairment due to sensory loss of the S1 nerve root was five percent. Dr. Harris found that appellant had three percent impairment of the right lower extremity due to sensory loss. The medical consultant applied the same tables to rate sensory impairment of the left leg at three percent. Dr. Harris advised that maximum medical improvement was April 24, 2007, the date of Dr. Sanan's medical report. He advised that the impairment rating provided by Dr. Sanan had been based on mechanical low back pain of the spine rather than to the lower extremities, which is not allowed under the Federal Employees' Compensation Act.

By decision dated August 22, 2007, the Office granted appellant a schedule award for three percent impairment of each lower extremity. The period of compensation ran for 17.28 weeks from April 24 to August 22, 2007. On September 24, 2007 the Office issued an amended award to correct a typographical error in the August 22, 2007 decision.

[1] The Board notes that Table 15-15, page 424, similarly provides up to 60 percent deficit for Grade 3 sensory loss.

LEGAL PRECEDENT

The schedule award provision of the Act[2] and its implementing regulations[3] 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 should be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standards applicable to all claimants.[4] Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.[5]

A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine, no claimant is entitled to such an award.[6] However, as the Act makes provision for the lower extremities, a claimant may be entitled to a schedule award for permanent impairment to a lower extremity even though the cause of the impairment originates in the spine.[7]

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. The description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[8]

ANALYSIS

The Board finds that the medical evidence of record establishes that appellant does not have more than three percent impairment of each lower extremity.

On April 24, 2007 Dr. Sanan, a Board-certified neurological surgeon, reported that appellant experienced persistent dull and aching pain in his right buttock, numbness in his right calf, aching in his left heel and numbness in his second and third toes. He opined that this condition was likely to be permanent. On physical examination, Dr. Sanan found normal gait and station, full lower extremity motor function bilaterally and deep tendon reflexes that were symmetrical at the knees and absent at the ankles. He found that appellant had 10 percent

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] 20 C.F.R. § 10.404(a).

[5] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[6] *George E. Williams*, 44 ECAB 530 (1993).

[7] *Id.*

[8] *Vanessa Young*, 55 ECAB 575 (2004).

impairment under the fourth edition of the A.M.A., *Guides*. He did not address the specific tables by which the impairment rating was made.

The Board finds that Dr. Sanan's impairment rating is of diminished probative value. The rating provided was based on an outdated version of the A.M.A., *Guides*. As noted, all impairment ratings made after February 2001 must be based on the fifth edition of the A.M.A., *Guides*.[9] While noting full lower extremity range of motion and strength, Dr. Sanan did not otherwise explain the basis for his 10 percent impairment rating. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[10] Because Dr. Sanan's report is based on an incorrect version of the A.M.A., *Guides* and lacks sufficient rationale for the impairment rating made, the opinion is of diminished probative value.

On July 18, 2007 Dr. Harris, a Board-certified orthopedic surgeon acting as an Office medical consultant, reviewed Dr. Sanan's April 24, 2007 report to determine appellant's lower extremity impairment due to pain. He noted that appellant had residual sensory loss originating in the lumbar spine causing numbness in both lower extremities. There was no motor weakness, atrophy, reflex asymmetry, or loss of range of motion. Dr. Harris utilized the fifth edition of the A.M.A., *Guides* to rate three percent impairment of both lower extremities for sensory loss. He noted that the maximum percentage loss allowed for the S1 nerve root under Table 15-18 was five percent. Dr. Harris graded the extent of sensory deficit as Grade 3, which allows up to 60 percent deficit, for pain that interferes with some activities. Sixty percent of the maximum five percent for sensory loss of the S1 nerve root results in three percent impairment to the right and left legs. He postulated that the 10 percent impairment rating of Dr. Sanan had been for loss to the spine, rather than the lower extremities. The Board finds that the report of Dr. Harris is well rationalized and the impairment rating he provided conforms to the protocols of the A.M.A., *Guides*. For this reason, his report constitutes the weight of medical opinion.[11]

CONCLUSION

The Board finds that appellant has no more than three percent impairment of his lower extremities, for which he received a schedule award.

[9] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[10] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[11] It is well established that when an attending physician's report provides an impairment estimate but does not address how the estimate was made under the A.M.A., *Guides*, the Office may rely on the impairment estimate recommended by its medical adviser or consultant where he has properly applied the A.M.A., *Guides*. *See Laura Heyen*, 57 ECAB 435 (2006).

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2008
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