

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

R.B., Appellant)	
)	
and)	Docket No. 08-1788
)	Issued: August 17, 2009
DEPARTMENT OF JUSTICE, FEDERAL PRISON SYSTEMS, Anthony, NM, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 13, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 30, 2008 regarding 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 11 percent permanent impairment to his right leg and 4 percent permanent impairment to his left leg.

FACTUAL HISTORY

Appellant filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries on December 28, 1990 in the performance of duty when he tripped over a mop bucket. The accepted conditions, according to a July 16, 2007 Office decision, are: lumbosacral sprain, right lateral collateral ligament sprain, right knee enthesopathy, lumbar intervertebral disc displacement and disturbance of skin sensation.

By decision dated November 8, 1994, the Office issued a schedule award for eight percent permanent impairment to the right leg. The Board reviewed this decision and by decision dated November 18, 1997, remanded the case for further development.¹ By decision dated February 3, 1998, the Office issued a schedule award for an additional two percent right leg permanent impairment. It denied an additional schedule award by decision dated October 9, 2003. An Office hearing representative remanded the case in a decision dated May 14, 2004.

In a report dated June 17, 2004, an Office hearing representative opined that appellant had 11 percent right leg impairment, based on thigh and calf atrophy. By decision dated July 12, 2004, the Office issued a schedule award for an additional one percent right leg permanent impairment. This decision was affirmed by an Office hearing representative in a decision dated May 23, 2005. The Board issued an order remanding the case for proper assemblage of the case record.² By decision dated September 1, 2006, the Office reissued the July 12, 2004 schedule award decision to protect appellant's appeal rights.

Appellant requested a hearing before an Office hearing representative and submitted additional evidence. In a report dated April 10, 2007, Dr. Gerald Halaby, an orthopedic surgeon, noted that appellant was seen on March 28, 2007 by a physical therapist. He stated that, according to the physical therapist, appellant had 11 percent permanent impairment to the legs due to radiculopathy. By decision dated June 5, 2007, an Office hearing representative remanded the case for further development. The hearing representative indicated that the Office should have an Office medical adviser review the April 10, 2007 report from Dr. Halaby.

In a report dated July 5, 2007, the Office medical adviser reviewed Dr. Halaby's April 10, 2007 report and the March 28, 2007 physical therapist report. For the right leg, the medical adviser found seven percent impairment, based on motor deficit in the L5 nerve root. As to the left leg, the Office medical adviser opined that there was four percent impairment, based on an L5 nerve root motor deficit.

By decision dated July 16, 2007, the Office determined that appellant did not have more than 11 percent right leg permanent impairment. In a decision dated September 7, 2007, it issued a schedule award for four percent left leg permanent impairment. The period of the award was 11.52 weeks from April 10, 2007.

Appellant requested a hearing before an Office hearing representative, which was held on March 13, 2008. He submitted medical reports from Dr. James Boone, an orthopedic surgeon, diagnosing low back arthritis spondylosis with lumbar disc displacement. In a decision dated May 30, 2008, the hearing representative affirmed the July 16 and September 7, 2007 decisions.

¹ Docket No. 95-3095 (issued November 18, 1997).

² Docket No. 05-1350 (issued December 5, 2005).

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.³ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.⁴

ANALYSIS

Appellant has received schedule awards for 11 percent right leg impairment and 4 percent left leg impairment. On appeal he asks "why was I awarded the compensation from period April 10 to June 29, 2007. I should have been awarded more weeks." Appellant argued that he had 11 percent impairment in both legs. As to the left leg, in his April 10, 2007 report, Dr. Halaby stated, "According to Mr. Zuniga's [the physical therapist] calculation of impairment, the patient has a regional impairment to lower extremities of 11 percent due to this radiculopathy." While he refers to the "lower extremities," neither he nor any physician of record opined that appellant had 11 percent left leg impairment. The Office medical adviser noted that the physical therapist found four percent left leg impairment based on motor deficit in the L5 nerve root, and the medical adviser concurred with that opinion. Under Table 15-18 of the A.M.A., *Guides*, the maximum impairment for motor deficit in the L5 nerve root is 37 percent.⁵ Grading the impairment at 10 percent of the maximum, pursuant to Table 15-16, the Office medical adviser concurred that the impairment was four percent.⁶ There was no probative medical evidence of a greater impairment.⁷

With respect to the period of the award, 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.⁸ In this case the Office medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Halaby, April 10, 2007. The number of weeks is determined under 5 U.S.C. § 8107. The

³ 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).

⁴ A. *George Lampo*, 45 ECAB 441 (1994).

⁵ A.M.A., *Guides* 424, Table 15-18.

⁶ *Id.* at Table 15-16. The maximum impairment for motor deficit in the identified nerve root is graded according to severity under Table 15-16.

⁷ The Board notes that any permanent impairment must be causally related to an accepted employment injury. *Rosa Whitfield Swain*, 38 ECAB 368 (1987).

⁸ *Albert Valverde*, 36 ECAB 233, 237 (1984).

maximum number of weeks of compensation for the leg is 288, and therefore appellant was entitled to four percent, or 11.52 weeks commencing April 10, 2007.

Appellant does not appear to argue that he is entitled to more than the 11 percent previously award for the right leg. Neither Dr. Halaby, Dr. Boone nor other physicians of record described an impairment greater than 11 percent for the right leg. The Office medical adviser found that appellant had seven percent right leg impairment based on L5 nerve root motor deficit, using Tables 15-18 and 15-16. There is no probative medical evidence establishing a right leg impairment greater than the 11 percent.

CONCLUSION

The Board finds that the evidence of record does not establish more than 11 percent right leg permanent impairment or 4 percent left leg permanent impairment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 30, 2008, September 7 and July 16, 2007 are affirmed.

Issued: August 17, 2009
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