

Beginning in 2001 and 2002, appellant was followed by Dr. Douglas L. Stringer, and Dr. Merle P. Stringer, attending Board-certified neurosurgeons, who both diagnosed lumbar disc herniations with left-sided L5-S1 radiculopathy. On May 17, 2002 Dr. D. Stringer performed left L4-5 and L5-S1 laminotomies with nerve root decompression and a left L5-S1 discectomy, authorized by the Office. Appellant resumed light duty following surgery.¹

On May 15, 2003 appellant claimed a schedule award.

Appellant's left-sided L5-S1 radiculopathy worsened through 2003 and 2004. On September 20, 2004 Drs. D. and M. Stringer performed bilateral decompression laminectomies at L5-6 and L6-S1, a bilateral microdiscectomy at L5-6 and anterior and posterior L5-6 fusions and fixations with screw and cage placement. The Office authorized this surgery. Appellant returned to light duty in April 2005.²

Drs. D. and M. Stringer submitted reports dated through January 2007, noting appellant's lumbar pain with intermittent, spotty loss of pinprick sensation in the lower extremities. They administered periodic lumbar injections.

In a February 22, 2007 report, Dr. M. Stringer opined that appellant had reached maximum medical improvement. On examination, he found normal sensation in all extremities. Dr. M. Stringer diagnosed a Grade 1 L3-4 spondylolisthesis with foraminal stenosis and mechanical low back pain. He stated that appellant had a 34 percent whole person impairment due to his lumbar injuries and surgeries, 25 percent based on unspecified edition of the American Medical Association's, *Guides to the Evaluation of Permanent Impairment* (hereinafter, "A.M.A., *Guides*") and 9 percent based on the "Florida Impairment Rating Guidelines." Drs. D. and M. Stringer provided progress reports through August 2007 noting intermittent, spotty loss of pinprick sensation in the lower extremities.

On August 29, 2007 an Office medical adviser reviewed the record to determine appellant's eligibility for a schedule award. He opined that Dr. Stringer's impairment rating appeared to be a diagnosis-related estimate from the A.M.A., *Guides*, fifth edition, Table 15-3.³ The Office medical adviser explained that the Federal Employees' Compensation Act did not provide for diagnosis-related estimates. He opined that there was no basis for a schedule award for either lower extremity. The Office medical adviser therefore assessed a zero percent impairment.

By decision dated September 13, 2007, the Office denied appellant's schedule award claim on the grounds that he had not established a ratable impairment of a scheduled member. It

¹ By decision dated April 29, 2004, the Office determined that appellant's actual earnings as a modified inventory manager beginning on March 31, 2003 properly represented his wage-earning capacity.

² The Office accepted that appellant sustained a recurrence of disability from August 8, 2006 to mid-January 2007.

³ A.M.A., *Guides* 384 (fifth edition), Table 15-3 is entitled "Criteria for Rating Impairment Due to Lumbar Spine Injury."

found that Dr. D. Stringer provided a whole person impairment and a diagnosis-related estimate, neither of which were provided for under the Act.

In an October 10, 2007 letter, appellant requested reconsideration. He submitted additional evidence.

Drs. D. and M. Stringer administered lumbar injections in August and September 2007. In an October 10, 2007 report, Dr. D. Stringer noted a 3+/5 weakness in major muscle groups of both legs. In a December 3, 2007 report, Dr. M. Stringer noted intermittent subjective paresthesias in the lower extremities without objective evidence of nerve root compression.

By decision dated January 3, 2008, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. It found that the additional evidence did not contain an impairment rating according to the A.M.A., *Guides*. Also, the reports did not provide sufficient detail regarding the nature and extent of the spinal condition. The Office noted that schedule awards were not payable for impairments of the spine where there were no related impairments of the extremities.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulations⁵ 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 regulations as the appropriate standard for evaluating schedule losses.⁶

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the regulations.⁷ Because neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back,⁸ no claimant is entitled to such an award.⁹ However, in 1966, amendments to the Act modified the schedule award provision 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 provision of the Act includes the extremities, a

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* 20 C.F.R. § 10.404; *Guisepe Aversa*, 55 ECAB 164 (2003).

⁷ *Henry B. Floyd, III*, 52 ECAB 220 (2001).

⁸ The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

⁹ *Vanessa A. Young*, 55 ECAB 575 (2004).

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

Appellant sustained an employment-related lumbosacral strain and an aggravation of degenerative disc disease on August 4, 2000. He underwent multi-level lumbar discectomies and fusions on May 2002 and September 2004. Appellant claimed a schedule award on May 15, 2003. However, he did not submit sufficient medical evidence establishing that he sustained a ratable impairment to a scheduled member of the body.

Dr. M. Stringer, an attending Board-certified neurosurgeon, submitted a February 22, 2007 report opining that appellant had reached maximum medical improvement. He opined that appellant had impairments of the spine equal to a 34 percent whole person impairment, according to the A.M.A., *Guides* and a state rating guideline. However, as set forth above, there is no provision under the Act for a schedule award due to impairment of the back. Also, a schedule award is not payable for an impairment of the whole person.¹¹ Additionally, there is no provision under the Act for the use of impairment rating systems other than the A.M.A., *Guides*.¹²

Appellant would be entitled to a schedule award for lower extremity impairment caused by the accepted lumbar injury.¹³ Dr. D. Stringer, an attending Board-certified neurosurgeon, submitted an October 10, 2007 report noting 3+/5 weakness in major muscle groups of both legs. In reports from 2005 to 2007, Drs. D. and M. Stringer found intermittent loss of pinprick sensation in the lower extremities. However, neither physician submitted an impairment rating utilizing the appropriate portions of the A.M.A., *Guides*, setting forth a ratable impairment of the lower extremities based on weakness, loss of sensation or other deficit. Thus, appellant has not established entitlement to a schedule award.

CONCLUSION

The Board finds that appellant has not established a ratable lower extremity impairment related to an accepted lumbar injury.

¹⁰ *Id.*

¹¹ *Paul A. Zoltek*, 56 ECAB 325 (2005).

¹² *See supra* note 5.

¹³ *See Vanessa A. Young, supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 3, 2008 and September 13, 2007 are affirmed.

Issued: February 23, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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