

The record indicates that appellant retired in 1997 and selected Office of Personnel Management retirement benefits.

In a report dated October 9, 2007, Dr. George Rodriguez, an osteopath, provided a history and results on examination. He diagnosed lumbosacral strain/sprain, and L5-S1 herniated disc, and stated the conditions were secondary to the September 13, 1992 employment injury. With respect to permanent impairment, Dr. Rodriguez opined that appellant had three percent impairment to each leg for dysesthesia. He referred to Table 17-37 and 16-10 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and identified the nerve as “50 percent of sciatic.” Dr. Rodriguez graded the impairment at 25 percent of a maximum 12 percent for 3 percent impairment to each leg. He also identified the superior gluteal nerve, but indicated there was no impairment under Table 17-37.

An Office medical adviser reviewed the medical records in a January 27, 2008 report. He stated that Dr. Rodriguez incorrectly identified the sciatic nerve, as the entire nerve was not involved. The medical adviser found the S1 nerve root was involved, based on the diagnosis of right-sided L5-S1 herniated disc. He noted the sciatic nerve involves four different nerve roots, and the sciatic nerve is formed anatomically after the nerve roots coalesce. The medical adviser applied Table 15-18 of the A.M.A., *Guides*, which provides a maximum of five percent for sensory deficit in the S1 nerve root. The impairment was graded at 25 percent of the maximum under Table 15-15 for diminished light touch, with or without minimal abnormal sensations or pain, that is forgotten during activity. The medical adviser concluded that appellant had a one percent permanent impairment to each leg.

By decision dated February 21, 2008, the Office issued a schedule award for a one percent permanent impairment to each leg. The period of the award was 40.32 days from October 9, 2007. The pay rate for compensation purposes was \$487.44, at a compensation rate of 66 and 2/3 percent.

LEGAL PRECEDENT -- ISSUE 1

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.¹ 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 A.M.A., *Guides* as the uniform standard applicable to all claimants.²

¹ 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).

² A. George Lampo, 45 ECAB 441 (1994).

ANALYSIS -- ISSUE 1

Dr. Rodriguez, an attending physician, provided an opinion as to a permanent impairment of both legs using Table 17-37.³ The Office medical adviser offered a rationalized medical opinion as to why he did not believe this table was appropriate under the circumstances of this case. He noted the diagnosis of L5-S1 herniated disc, discussed the development of the sciatic nerve and explained that the sciatic nerve was composed of four different nerve roots. The medical adviser indicated the affected nerve root was S1. Based on his review of the medical evidence, application of Table 17-37 using the sciatic nerve was not appropriate in this case.

Dr. Rodriguez did not provide a rationalized medical opinion on the issue. He identified “50 percent” of the sciatic nerve in his report, without providing further explanation as to the appropriate use of this table in the present case. Dr. Rodriguez did not provide any medical rationale to support his application of Table 17-37 of the A.M.A., *Guides*.

The Board finds that the opinion of the Office medical adviser represents the weight of the evidence in this case. He identified the S1 nerve root, which under Table 15-18 has a maximum impairment of 5 percent for sensory deficit or pain.⁴ The impairment was graded under Table 15-15 as Grade 4, which is for “distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity.”⁵ The medical adviser noted the provisions of Table 15-15 and found this grade represented appellant’s impairment. Grade 4 results in an impairment of 1 to 25 percent of the maximum, and the Office medical adviser used 25 percent. The resulting impairment is therefore 25 percent of 5 percent, or 1.25 percent, which is rounded to 1 percent for each leg.⁶

The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the leg, the maximum number of weeks of compensation is 288 weeks. Since appellant’s impairment was 2 percent, she is entitled to 2 percent of 288 weeks, or 5.76 weeks of compensation. 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.⁷ In this case the Office medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Rodriguez. The award therefore properly runs for 5.76 weeks commencing on October 9, 2007.

³ A.M.A., *Guides* 552. Table 17-37 provides impairment ratings for nerve deficits in specific nerves. Figures 17-8 and 17-9 show the sensory and motor nerves of the lower extremities.

⁴ *Id.* at 424, Table 15-18.

⁵ *Id.* at 424, Table 15-15.

⁶ As the Office’s procedure manual explains with respect to hearing loss, the number is rounded up from .50 and down from .49. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2) (September 1994).

⁷ *Albert Valverde*, 36 ECAB 233, 237 (1984).

LEGAL PRECEDENT -- ISSUE 2

Under 5 U.S.C. § 8101(2), “‘monthly pay’” means the monthly pay at the time of injury or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater....” If there is permanent disability involving the loss of use of a scheduled member of the body, the basic compensation rate is 66 and 2/3 percent of the employee’s monthly pay.⁸

ANALYSIS -- ISSUE 2

Appellant’s representative requested the Board to review the issue of pay rate without providing any specific argument. The pay rate for compensation purposes was \$487.44 per week based on appellant’s pay as of March 29, 1994. On that date appellant had been reassigned to a position that did not include Sunday or night pay. Since she was unable to earn the wages she had earned at the time of injury, this represents the date disability began.⁹ The Office determined that appellant’s pay rate as of March 29, 1994 was \$25,380.00 annually, with a base salary of \$24,380.00 plus \$966.80 in Sunday and night differential. No probative evidence of error regarding its determination was submitted. With respect to the compensation rate, there was no evidence establishing entitlement to augmented compensation under 5 U.S.C. § 8110 and therefore appellant was paid at a compensation rate of 66 and 2/3 percent.

CONCLUSION

The weight of the probative medical evidence did not establish more than a one percent permanent impairment to each leg. The pay rate for compensation purposes was correct based on the evidence of record.

⁸ 5 U.S.C. § 8107.

⁹ The term “disability” as used under the Act means the incapacity, because of injury in employment, to earn the wages which the employee was receiving at the time of injury. *Donald Johnson*, 44 ECAB 540, 548 (1993); 20 C.F.R. § 10.5 (17).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 21, 2008 is affirmed.

Issued: January 16, 2009
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