

FACTUAL HISTORY

On December 8, 2003 appellant, then a 42-year-old security guard, injured his back and leg while lifting and moving vehicle barriers and cones. The Office accepted the claim for lumbar sprain, lumbar herniated nucleus pulposus at L4-5 and L5-S1 levels, lumbar spinal stenosis at L4-5 and L5-S1 levels and lumbar degenerative disc disease at L4-5 levels. It paid compensation benefits and authorized a lumbar spinal fusion at L4-5 and L5-S1 levels, which appellant underwent on May 14, 2007. On May 27, 2008 appellant returned to full-duty work as a telephone operator.

On May 21, 2008 appellant filed a claim for a schedule award. In an April 29, 2008 report, Dr. Mladen Djurasovic, a Board-certified orthopedic surgeon, advised that appellant was a year postsurgery and had reached maximum medical improvement. He noted that appellant had intermittent symptoms which were consistent with myelofibrosis in his muscles as a consequence of his injury and surgery. Dr. Djurasovic opined that appellant could work with permanent restrictions in a sedentary-type position.

In a May 29, 2008 letter, the Office advised appellant that additional medical evidence was needed to take further action on his schedule award claim.

In a June 3, 2008 report, Dr. Djurasovic advised that appellant reached maximum medical improvement April 29, 2008 and that the L4-5 nerve root was affected. However, he did not specify any permanent impairment to a lower extremity due to loss of function from either sensory deficit or decreased strength.

In an August 12, 2008 report, Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon and Office referral physician, reviewed the medical evidence and statement of accepted facts. On examination the lumbar spine was reported as normal. Examination of the lower extremities was also normal with the exception of supine straight leg raising on the right, which elicited a complaint of low back pain. Dr. Sheridan stated that appellant reached maximum medical improvement on October 25, 2007. Using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² Dr. Sheridan found that appellant had six percent permanent impairment to the right leg due to the S1 nerve root. Under Table 15-18, page 424 of the A.M.A., *Guides*, the maximum impairments for the S1 nerve root due to sensory deficit or pain was 5 percent and 20 percent for loss of strength. Under Table 15-15, page 424, Dr. Sheridan found that appellant had 25 percent sensory deficit (Grade 4), which he multiplied by the 5 percent maximum loss of function to find 1.25 percent impairment due to pain.³ Under Table 15-16, page 424, he also found 25 percent motor deficit (Grade 4) and multiplied this by the 20 percent maximum loss of function to find 5 percent motor impairment of the lower extremity.

² A.M.A., *Guides* (5th ed. 2001).

³ The Board notes that Dr. Sheridan multiplied the 25 percent by the 5 percent to obtain 1.25 percent sensory deficit.

In an August 25, 2008 report, an Office medical adviser reviewed the medical evidence of record and agreed that appellant had six percent impairment of the right leg under the A.M.A., *Guides*. The medical adviser noted that appellant reached maximum medical improvement on April 29, 2008. He advised that the second opinion examination found a right S1 nerve root motor and sensory impairment.

By decision dated September 10, 2008, the Office granted appellant a schedule award for six percent impairment to the right lower extremity. The award covered the period May 27 to September 24, 2008 for a total of 9.36 weeks of compensation.

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. The Act, however, 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

ANALYSIS

The Office accepted that appellant sustained a lumbar strain, lumbar herniated nucleus pulposus at L4-5 and L5-S1 and lumbar spinal stenosis and lumbar degenerative disc disease at L4-5 levels as a result of the employment incident. It authorized a lumbar spinal fusion at the L4-5 and L5-S1 levels, which was performed on May 14, 2007. In a June 3, 2008 report, Dr. Djurasovic advised that appellant reached maximum medical improvement on April 29, 2008 and that the L4-5 nerve root was affected. However, he did not provide any rating for impairment or any examination findings from which an impairment rating could be made. The Office referred appellant to Dr. Sheridan for a second opinion evaluation on the issue of whether he sustained any permanent impairment to his lower extremities in accordance with the A.M.A., *Guides*.

On examination, Dr. Sheridan found a normal examination of the lumbar spine and lower extremities, with the exception of the supine straight leg raising sign on the right side which elicited a complaint of low back pain. He advised that appellant's right S1 nerve root was impaired. Under Table 15-18, page 424 of the A.M.A., *Guides* the maximum impairment due to sensory deficit or pain of the S1 nerve root is 5 percent and the maximum impairment for loss of strength is 20 percent. Under Table 15-15, page 424, Dr. Sheridan graded appellant's sensory deficit at 25 percent (Grade 4), which, when multiplied by the 5 percent maximum allowed for

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 20 C.F.R. § 10.404.

⁶ *Ronald R. Kraynak*, 53 ECAB 130 (2001).

sensory deficit or pain, totals 1.25 percent impairment due to pain. This was rounded down to one percent.⁷ Under Table 15-16, page 424, Dr. Sheridan graded appellant's motor deficit at 25 percent (Grade 4), which, when multiplied by the 20 percent maximum allowed for loss of strength, totals 5 percent impairment due to motor deficit. Under the Combined Values Chart on page 604, five percent motor deficit combined with one percent sensory deficit results in six percent right lower extremity impairment. Dr. Sheridan did not find any impairment to the left lower extremity. An Office medical adviser reviewed the medical record and agreed with the rating by Dr. Sheridan as consistent with the A.M.A., *Guides*.

The Board finds that Dr. Sheridan properly utilized the A.M.A., *Guides*. There is no other evidence of record to establish that appellant has more than six percent impairment of the right leg.

CONCLUSION

The Board finds that appellant has no more than six percent impairment to his right leg, for which he received a schedule award.⁸

ORDER

IT IS HEREBY ORDERED THAT the September 10, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 23, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (June 2003) provides that the policy of the Office is to round the calculated percentage of impairment to the nearest whole number. Fractions should be rounded down from .49 or up from .50. *Id.* at Chapter 3.700.4(b) (September 1994).

⁸ Appellant submitted new evidence on appeal. However, the Board may only review evidence that was in the record at the time the Office issued its final decision. 20 C.F.R. § 501.2(c).