



In an October 23, 2007 report, Dr. Johann van Beest, a chiropractor, opined that appellant had a 23 percent whole person impairment rating pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001). He noted that the A.M.A., *Guides*, 384, Table 15-3 discuss diagnostic-related estimates for rating impairment due to lumbar spine injury and he advised that appellant met the criteria for Category IV. Dr. Beest reviewed appellant's prior surgeries at L4-5 and L5-S1 and noted her residual L5 radiculopathy and pseudoarthrosis at the L4-5 level.

By memorandum dated January 24, 2008, the Office asked an Office medical adviser to review the medical evidence and assess appellant's permanent impairment. It noted that appellant's claim was accepted for lumbar herniated nucleus pulposus, lumbar neuritis or radiculitis. In a January 25, 2008 report, the Office medical adviser noted that Dr. Beest's report was not sufficient to rate impairment under the Federal Employees' Compensation Act because he rated impairment to the spine and provided an estimate based on whole person impairment. He noted that, while his conclusion that appellant had 23 percent impairment of the whole person appeared correct, Dr. Beest did not evaluate appellant's lower extremities. The Office medical adviser noted that Dr. Beest's descriptions of motor and sensory abnormality in the left leg were not adequate to allow him to rate her impairment. He recommended that the Office obtain another medical opinion.

By letter dated June 18, 2008, the Office referred appellant to Dr. John Sklar, a Board-certified physiatrist, for a second opinion. In a July 9, 2008 report, Dr. Sklar noted that appellant had undergone four back surgeries. He noted that she did not have any ratable nerve root impingement or radiculopathy. Dr. Sklar noted that, while she did have some weakness in the lower extremities, it was not neuroanatomical. However, he noted that the A.M.A., *Guides* allowed for one to three percent lower extremity impairment for pain. Dr. Sklar advised that appellant had mild pain in her right lower extremity and therefore one percent impairment for pain in her right lower extremity would be appropriate. As appellant had a bit more pain in her left lower extremity, he recommended that a two percent impairment would be appropriate. Dr. Sklar found no other ratable impairment.

In a report dated July 29, 2008, the Office medical adviser noted that appellant's accepted conditions were lumbar IV disc disorder with myelopathy, psychogenic pain and lumbosacral radiculitis. He reviewed Dr. Sklar's report and indicated that a permanent impairment for the right lower extremity of one percent and the left lower extremity of two percent was proper pursuant to the A.M.A., *Guides*, page 573.

On August 27, 2008 the Office issued a schedule award for one percent right lower extremity impairment and two percent left lower extremity impairment.

## LEGAL PRECEDENT

The schedule award provision of the Act<sup>1</sup> and its implementing regulations,<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of schedule 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, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>3</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

## ANALYSIS

In the instant case, the Board finds that appellant has no more than one percent impairment to her right lower extremity and two percent impairment to her left lower extremity.

The opinion of Dr. Beest is not sufficient to establish impairment under the Act as he determined that appellant had 23 percent whole person impairment. Dr. Beest did not rate appellant for impairment to a scheduled member. As the Board has held, the Act does not provide for a schedule award based on permanent impairment of the spine or the whole person.<sup>7</sup>

Dr. Sklar and the Office medical adviser properly evaluated appellant's condition and agree that appellant had one percent impairment of her right lower extremity and two percent impairment of her left lower extremity based on pain. He noted that appellant did not have ratable nerve root impingement or radiculopathy, but he did note some weakness in her lower extremities which was not neuroanatomical. Both Dr. Sklar and the Office medical adviser found that it was therefore appropriate to rate appellant under the A.M.A., *Guides* for pain. The A.M.A., *Guides* allow for an impairment rating of between one and three percent for each lower

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> *Id.* at § 10.404(a).

<sup>4</sup> *Id.*

<sup>5</sup> *George E. Williams*, 44 ECAB 530 (1993).

<sup>6</sup> *Id.*

<sup>7</sup> *Tania R. Keka*, 55 ECAB 354 (2004); *Guiseppe Aversa*, 55 ECAB 164 (2003).

extremity if the body system impairment rating system does not adequately address appellant's condition.<sup>8</sup> Dr. Sklar found, and the Office medical adviser agreed, that appellant's impairment could not be rated appropriately under Chapter 17. Therefore, she had one percent impairment to her right lower extremity due to pain and two percent impairment to her left lower extremity due to pain utilizing Chapter 18. There is no evidence in the record that establishes that appellant has greater impairment.

**CONCLUSION**

The Board finds that appellant has not established that she is entitled to a schedule award for greater than one percent impairment to her right lower extremity and two percent impairment to her left lower extremity, for which she received schedule awards.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 27, 2008 is affirmed.

Issued: September 10, 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

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<sup>8</sup> A.M.A., *Guides* 573, 18.3d.