

On January 8, 2009 appellant submitted a claim for compensation (Form CA-7) indicating he was claiming a schedule award. He submitted a December 30, 2008 report from Dr. Horace Petersen, an osteopath, who provided a history and results on examination, diagnosing lumbar degenerative disc disease with a small L5-S1 disc herniation, myofascial pain syndrome, and facet disease with mild stenosis and radiculopathy. Dr. Petersen noted that appellant complained of decreased sensation in the right calf, but he could not find a distinguishable difference between pinched or light touch compared to the other leg. With respect to permanent impairment, he stated that appellant had a 19 percent whole person impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a report dated March 2, 2009, Dr. Petersen indicated that appellant had myofascial pain syndrome with degenerative disc disease causing pain in his right lower extremity with a significant impairment to his functional activities. He opined that appellant had a 24 percent right lower extremity impairment secondary to the stenosis and the myofascial pain syndrome, and was rated in “a class III rating” under the A.M.A., *Guides*. Dr. Petersen opined that appellant had a preexisting problem that was exacerbated by his work activities.

In a report dated May 2, 2009, Dr. Petersen again stated that the impairment was 24 percent to the right leg. The Office referred the case to an Office medical adviser for review. In a report dated July 4, 2009, the medical adviser opined that appellant had a two percent right leg impairment. He reported that, under Table 16-12, a sensory deficit in the sural nerve had a three percent leg impairment as a default value. The medical adviser referred to Dr. Petersen’s statement that he could not find a difference between pinched or light touch compared to the other leg, and stated that this history of a sensory abnormality was unsupported by examination findings. According to the medical adviser, since the history of sensory abnormality was not confirmed by examination, the impairment rating had to be modified using grade modifiers to two percent or possibly one percent. He stated that, erring on the side of generosity, the impairment would be determined at two percent.

By decision dated August 20, 2009, the Office issued a schedule award for a two percent permanent impairment to the right leg. The period of the award was 5.76 weeks from December 30, 2008. Appellant requested a hearing before an Office hearing representative, which was held on December 10, 2009. By decision dated February 22, 2010, the hearing representative affirmed the August 20, 2009 decision.

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.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

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).

justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.² For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.³

ANALYSIS

With respect to a permanent impairment, appellant submitted reports from Dr. Petersen, who initially opined that appellant had a 19 percent whole person impairment. The Board notes that neither the Act nor its regulations provide for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of “organ” under the Act.⁴

In his March 2, 2009 report, Dr. Petersen stated that the impairment was 24 percent to the right leg, for a “Class III” rating. He did not indicate which table or tables he was attempting to apply, or provide any other explanation as to how the 24 percent was determined under the A.M.A., *Guides*. The Board finds Dr. Petersen’s opinion that appellant had 24 percent right leg impairment is of diminished probative value.

The Office medical adviser found two percent impairment, applying the findings of Dr. Petersen in his December 30, 2008 report. The medical adviser did identify Table 16-12, and he identified a sensory deficit in the sural nerve. Under Table 16-12, the default impairment is three percent for sural nerve sensory deficit for a Class (CDX) 1 impairment.⁵ The medical adviser then stated that the default should be modified to two or possibly one percent because Dr. Petersen did not confirm the history of sensory abnormality on examination, but the A.M.A., *Guides* provide a specific method for adjusting the default value up or down based on application of Table 16-6 (functional history) and Table 16-8 (clinical studies). Moreover, the A.M.A., *Guides* specifically state that when using Table 16-12 there is no adjustment for physical examination, since the neurologic examination findings define the impairment values found in Table 16-12.⁶ The medical adviser appeared to make an adjustment based on physical examination findings, without further explanation. He did not state what grade modifier for functional history (GMFH) or clinical studies (GMCS) was applicable, or apply the proper formula (GMFH-CDX) + (GMCS – CDX) to calculate the net adjustment.⁷

The case will be remanded to secure a medical report that properly applies the sixth edition of the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision.

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

³ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁴ See *James E. Jenkins*, 39 ECAB 860 (1988); 5 U.S.C. § 8101(20).

⁵ A.M.A., *Guides* 534, Table 16-12.

⁶ *Id.* at 533.

⁷ See *id.* at 521.

CONCLUSION

The Board finds that the medical evidence requires further development with respect to the degree of permanent impairment under the A.M.A., *Guides*.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 22, 2010 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 8, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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