

**United States Department of Labor
Employees' Compensation Appeals Board**

C.A., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL AIR
WEAPONS STATION, China Lake, CA,
Employer**

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**Docket No. 09-1253
Issued: January 15, 2010**

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 16, 2009 appellant filed a timely appeal from a February 19, 2009 decision of the Office of Workers' Compensation Programs regarding a schedule award for the left lower extremity impairment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has more than a six percent impairment of the left leg, for which she received a schedule award.

On appeal, appellant contends that there is a conflict of medical opinion as to the appropriate percentage of permanent impairment.

FACTUAL HISTORY

The Office accepted that on or before November 12, 2001 appellant, then a 45-year-old electronics technician, sustained herniated L4-5 and L5-S1 discs due to repetitive heavy lifting at work.¹

Dr. William H. Mouradian, an attending Board-certified orthopedic surgeon, diagnosed herniated L4-5 and L5-S1 discs with nerve root impingement and displacement of the left S1 nerve root. He performed an L4-5 and L5-S1 microdiscectomy on December 13, 2001. Dr. Mouradian submitted periodic progress reports through February 2004 noting disc degeneration and nerve root impingement at the surgical site. On March 9, 2004 he performed a revision laminectomy at L4-5 and L5-S1 on the left to address spinal stenosis, recurrent disc herniations, severe adhesions and a dural tear.

Appellant returned to part-time, light-duty work in October 2004, gradually increasing to full-time work. Dr. Mouradian submitted progress notes through 2007.²

In May 13, 2008 reports, Dr. Mouradian noted appellant's complaints of lumbar pain with radiculopathy and paresthesias into the left lower extremity. He found restricted lumbar motion on examination without weakness, neurologic deficit or restricted motion in either leg. Dr. Mouradian diagnosed lumbar disc displacement at L4-5 and L5-S1. He opined that appellant had reached maximum medical improvement and noted permanent work restrictions against lifting more than 25 pounds. Dr. Mouradian opined that appellant had an impairment rating of "Category III at 13 percent plus 3 percent for pain, which provide[d] a combined value of 16 percent."

On June 3, 2008 appellant claimed a schedule award.

In a June 11, 2008 letter, the Office requested that Dr. Mouradian perform a schedule award assessment according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*). It advised Dr. Mouradian that schedule awards were not payable for impairment of the back or spine. Dr. Mouradian did not provide the requested rating.

On December 4, 2008 the Office referred the medical record and a statement of accepted facts to an Office medical adviser for calculation of the appropriate percentage of permanent impairment.

In a December 10, 2008 report, an Office medical adviser reviewed the medical record and statement of accepted facts. He noted that appellant was status post L4-5 and L5-S1 microdiscectomy and left revision laminectomy at L4-5 and L5-S1. The medical adviser opined

¹ The Office initially denied the claim by decision dated July 1, 2002. Following additional development, it vacated its prior decision and accepted the claim on November 22, 2002.

² A March 31, 2004 lumbar magnetic resonance imaging (MRI) scan showed postsurgical inflammatory reaction with fluid at the surgical site and disc degeneration from L4 to S1. A July 28, 2004 lumbar MRI scan showed postoperative changes at L4-5 and L5-S1 with disc space narrowing and disc degeneration.

that she had reached maximum medical improvement as of May 13, 2008, as noted by Dr. Mouradian. Referring to Table 15-18, page 424 of the A.M.A., *Guides*,³ he noted that the maximum percentage loss of function due to sensory deficit or pain in the L5 and S1 nerve roots was five percent. Using Table 16-10,⁴ he determined that appellant had a Grade 3 or 60 percent impairment of the left L5 and S1 nerve roots due to pain. Multiplying the maximum 5 percent value by 60 percent, the adviser calculated that appellant had a 3 percent impairment of the left lower extremity for both affected nerve roots, or a total of 6 percent impairment of the left leg due to lumbar radiculopathy.

In a December 23, 2008 report, Dr. Mouradian noted appellant's upper extremity symptoms. He did not address her lower extremities.

By decision dated February 19, 2009, the Office granted appellant a schedule award for a six percent permanent impairment of the left lower extremity.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act⁵ provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁶

The Board notes that, although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under the Act for injury to the spine.⁷ In 1960, however, amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a scheduled member regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originates in the spine.⁸

³ Table 15-18, page 424 of the fifth edition of the A.M.A., *Guides* is entitled "Unilateral Spinal Nerve Root Impairment Affecting the Lower Extremity."

⁴ Table 16-10, page 482 of the fifth edition of the A.M.A., *Guides* is entitled "Determining Impairments of the Upper Extremity Due to Sensory Deficits or Pain Resulting from Peripheral Nerve Disorders."

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁷ *Vanessa Young*, 55 ECAB 575 (2004).

⁸ *Id.*

ANALYSIS

The Office accepted that appellant sustained herniated L4-5 and L5-S1 discs, requiring two surgeries. Dr. Mouradian, an attending Board-certified orthopedic surgeon, found that appellant reached maximum medical improvement as of May 13, 2008. He diagnosed lumbar disc displacement at L4-5 and L5-S1 with radiculopathy. Dr. Mouradian opined that appellant had a 16 percent impairment of the spine.

An Office medical adviser reviewed Dr. Mouradian's reports on December 10, 2008. He concurred that appellant reached maximum medical improvement. The adviser applied Table 16-10 of the A.M.A., *Guides*, pertaining to sensory deficits due to peripheral nerve disorders, to Dr. Mouradian's findings. He determined that appellant had a Grade 3 or 60 percent sensory deficit of the L5 and S1 nerve roots due to pain. Referring to Table 15-18, the adviser multiplied the 5 percent maximum value for each affected nerve root by 60 percent, resulting in a 3 percent impairment of the L5 and S1 nerve roots, for a total 6 percent impairment of the left lower extremity. The Board finds that the Office medical adviser used the appropriate portions of the A.M.A., *Guides* to calculate the percentage of impairment awarded. He accurately applied the rating criteria to Dr. Mouradian's findings. The Office medical adviser's opinion is sufficient to represent the weight of the medical evidence in this case.⁹

On appeal, appellant asserted that there was a conflict of medical opinion between Dr. Mouradian and the Office medical adviser regarding the percentage of permanent impairment. However, Dr. Mouradian did not address how he applied the A.M.A., *Guides* to his clinical findings. Moreover, his impairment rating was stated in terms of the lumbar spine and not the lower extremities. The Office medical adviser properly utilized the A.M.A., *Guides* in determining a six percent impairment of the left lower extremity. His opinion outweighs that of Dr. Mouradian.

CONCLUSION

The Board finds that appellant has no more than six percent impairment of the left leg, for which she received a schedule award.

⁹ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 19, 2009 is affirmed.

Issued: January 15, 2010
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**