

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

---

N.D., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Palm Coast, FL, Employer )

---

**Docket No. 10-643**  
**Issued: November 26, 2010**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 19, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 16, 2009 decision which affirmed the Office's March 12, 2009 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

**ISSUE**

The issue is whether appellant has more than a 13 percent impairment of his left lower extremity, for which he received a schedule award.

**FACTUAL HISTORY**

On August 1, 2005 appellant, then a 51-year-old letter carrier, injured his back while picking up a tub of flats. He stopped work on August 1, 2005 and returned to part-time work on September 16, 2005.<sup>1</sup> The Office accepted the claim for sprain/strain lumbar region,

---

<sup>1</sup> The record reflects that appellant again stopped work on May 20, 2006 and returned to full-time regular duty on April 12, 2008.

sprain/strain of the neck and cervical spondylosis without myelopathy and traumatic arthropathy. On June 25, 2007 it expanded the claim to include left-side sciatica, lumbar radiculopathy and aggravation of thoracic degenerative disc disease.

In an August 7, 2008 report, Dr. Arthur Becan, an orthopedic surgeon, noted appellant's history of injury and treatment. He advised that appellant could not perform household chores without modifications, could only sit comfortably for 30 minutes, could stand for 15 minutes and had difficulty walking. Appellant also reported difficulty sleeping, climbing stairs and rising from a seated position. Repetitive bending, twisting and lifting exacerbated his pain and he had difficulty lifting more than five pounds or driving for prolonged periods. Examination of the dorsal spine revealed tenderness over the posterior spinous processes from T6 to T10 with paravertebral muscle spasm in the left paraspinal muscles. Dr. Becan noted limited dorsal rotation bilaterally and had pain with all ranges of motion. The lumbosacral spine was tender from L3 through S1 and with bilateral paravertebral muscle spasm, worse on the left. Appellant had tenderness over the bilateral iliolumbar ligament and the left sacroiliac joint. Dr. Becan noted diminished lumbosacral spine ranges of motion and indicated that there was pain with all ranges of motion. He noted that the circumference of the gastrocnemius was 40 centimeters on the right versus 37 on the left. Dr. Becan conducted a sensory examination, and related that appellant had a perceived sensory deficit over the L5 and S1 dermatomes involving the left lower extremity. He utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*) and referred to Table 17-6<sup>2</sup> and explained that appellant had 13 percent impairment for left calf atrophy. Dr. Becan referred to Table 15-15 and Table 15-18<sup>3</sup> and determined that a Grade 2 sensory deficit of the left L5 nerve root and left S1 nerve root would correspond to four percent impairment for each. He opined that this resulted in 19 percent impairment to the left leg and advised that appellant reached maximum medical improvement.

On November 4 and December, 18 2008 appellant claimed a schedule award.

On February 5, 2009 the Office referred appellant's medical records, including Dr. Becan's report, to an Office medical adviser for review and calculation of impairment.

In a February 5, 2009 report, the Office medical adviser noted that Dr. Beacon had provided ratings for sensory deficit and calf atrophy; however, according to Table 17-2 certain ratings could not be combined. He explained for example that muscle atrophy could not be combined with nerve injury.<sup>4</sup> Thus, the Office medical adviser concluded that appellant had 13 percent impairment of the left leg due to atrophy, the higher of the two types of impairment rated by Dr. Beacon. He opined that appellant reached maximum medical improvement on August 7, 2008.

---

<sup>2</sup> A.M.A., *Guides* 530.

<sup>3</sup> *Id.* at 424.

<sup>4</sup> *Id.* at 526.

Accordingly, on March 12, 2009, the Office granted appellant a schedule award for 13 percent permanent impairment of the left lower extremity. The award covered a period of 37.44 weeks from August 7, 2008 to April 26, 2009.

By letter dated March 19, 2009, appellant's representative requested a hearing, which was held on July 29, 2009.

By decision dated October 16, 2009, the Office affirmed its March 12, 2009 decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>5</sup> and its implementing regulations<sup>6</sup> 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. 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, 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.<sup>7</sup>

In evaluating lower extremity impairments, Chapter 17 of the A.M.A., *Guides* notes that alternative methods exist by which impairment may be assessed: anatomic, functional or diagnosis-based estimates.<sup>8</sup> The evaluator is directed to the cross-usage chart at Table 17-2 on page 526 to determine when the methods for evaluating impairment may be combined. Before finalizing any physical impairment calculation that requires the combination of evaluation factors, the Office medical adviser should verify the appropriateness of the combination in Table 17-2.<sup>9</sup> If more than one method can be used, the method that provides the higher impairment rating should be adopted.<sup>10</sup>

### **ANALYSIS**

The Office accepted appellant's claim for sprain/strain lumbar region, sprain/strain of the neck and cervical spondylosis without myelopathy and traumatic arthropathy. It also later accepted conditions that included left-side sciatica, lumbar radiculopathy and aggravation of thoracic degenerative disc disease.

---

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404 .

<sup>7</sup> *Id.*

<sup>8</sup> A.M.A., *Guides* 525.

<sup>9</sup> *P.C.*, 58 ECAB 539 (2007).

<sup>10</sup> A.M.A., *Guides* 527, 555.

In a report dated August 7, 2008, Dr. Becan noted findings, examined appellant and utilized the A.M.A., *Guides*. He determined that appellant had atrophy of the gastrocnemius which was 40 centimeters on the right versus 37 on the left. Dr. Becan referred to Table 17-6<sup>11</sup> and explained that this would correspond to 13 percent impairment for left calf atrophy. He also conducted a sensory examination and related that appellant had a perceived sensory deficit over the L5 and S1 dermatomes involving the left lower extremity. Dr. Becan referred to Table 15-15 and Table 15-18<sup>12</sup> and determined that a Grade 2 sensory deficit of the left L5 nerve root and left S1 nerve root would correspond to a four percent impairment for each. The Board notes that according to Table 15-15<sup>13</sup> a Grade 2 would correspond to a maximum 80 percent sensory deficit, which would be multiplied by the maximum percentage loss of function due to sensory deficit or pain. In this case, the maximum percentage loss of function due to sensory deficit or pain for the L5 and S1 nerve roots would equate to five percent. Thus, the 80 percent sensory deficit multiplied by the 5 percent for loss of function due to sensory deficit or pain would result in a 4 percent impairment for each nerve root. The Board finds that Dr. Becan correctly applied the A.M.A., *Guides* up to this point. However, Dr. Becan incorrectly combined 13 percent for the left calf atrophy and the 8 percent for the nerve roots and opined that appellant was entitled to an impairment of 19 percent to the left lower extremity. Combining these values was incorrect because Table 17-2 of the A.M.A., *Guides* provides that impairment for atrophy should not be combined with impairment for a nerve injury.<sup>14</sup> Instead, Dr. Becan should have selected the higher of the two ratings. As noted above, if more than one method can be used, the method that provides the higher impairment rating should be adopted.<sup>15</sup>

In a February 5, 2009 report, the Office medical adviser also explained that under Table 17-2 ratings for muscle atrophy and a nerve injury could not be combined. Therefore, while Dr. Becan correctly determined appellant's entitlement under the individual impairments, he incorrectly combined the values. The Office medical adviser concluded that appellant would be entitled to the highest method provided by Dr. Becan, which was 13 percent for calf atrophy. The Board finds that the medical adviser properly applied the A.M.A., *Guides* and that appellant has no more than a 13 percent impairment of the left lower extremity.

On appeal, counsel suggests that a conflict was created between Dr. Becan and the Office medical adviser. However, Dr. Becan's opinion was of diminished probative value, with regard to the final impairment rating, due to the fact that he incorrectly combined values that may not be combined. Thus, his report was not based on a correct application of the A.M.A., *Guides*.<sup>16</sup> As

---

<sup>11</sup> *Id.* at 530.

<sup>12</sup> *Id.* at 424.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 526.

<sup>15</sup> *Supra* note 10.

<sup>16</sup> An opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment. *I.F.*, 60 ECAB \_\_\_ (Docket No. 08-2321, issued May 21, 2009).

his report did not comport with the A.M.A., *Guides*, it was insufficient to give rise to a conflict in the medical evidence.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he has more than a 13 percent impairment of his lower extremity, for which he received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 16, 2009 is affirmed.

Issued: November 26, 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