

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

C.H., Appellant)

and)

DEPARTMENT OF THE ARMY, U.S. ARMY)
INSTALLATION MANAGEMENT)
COMMAND, Fort Polk, LA, Employer)

**Docket No. 10-661
Issued: January 14, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 11, 2009 appellant filed a timely appeal from a November 16, 2009 merit decision of the Office of Workers' Compensation Programs granting her a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

ISSUE

The issue is whether appellant has more than 20 percent permanent impairment of the left leg.

FACTUAL HISTORY

The Office accepted that on October 22, 1996 appellant, then a 40-year-old child development program assistant, sustained lumbar sprain, spinal stenosis and a displaced lumbar intervertebral disc in the performance of duty. She experienced intermittent periods of disability until October 18, 2000, when she resumed full-time employment.

On November 17, 2008 appellant filed a claim for a schedule award. By letter dated December 8, 2008, the Office requested that she submit an impairment evaluation in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*).

In an impairment evaluation dated February 16, 2009, Dr. Michael Dole, a Board-certified internist and physiatrist, discussed appellant's symptoms of back pain. He found she was at maximum medical improvement. Dr. Dole reviewed the results of a functional capacity evaluation and concluded that appellant had no ratable impairment under the fifth edition of the A.M.A., *Guides*.

On May 12, 2009 the Office referred appellant to Dr. John P. Sandifer, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent of any employment-related permanent impairment. In a report dated June 2, 2009, Dr. Sandifer discussed appellant's current complaints of pain in her back radiating into her left hip and leg and tingling and numbness in her foot. He noted that a magnetic resonance imaging (MRI) scan showed spinal stenosis at L4-5 and L5-S1. Dr. Sandifer measured range of motion in the spine and found weakness in the left plantar flexors of Grade 4/5 and weakness in the left extensor hallucis longus and dorsiflexors of Grade 3/5. Using the sixth edition of the A.M.A., *Guides*, he determined that appellant had 20 percent left lower extremity impairment. Dr. Sandifer noted that the sixth edition of the A.M.A., *Guides* did not provide a disability rating for radiculopathy of the L5 and S1 nerve roots. In an accompanying permanent impairment worksheet, he diagnosed lumbar spinal stenosis with a subsidiary diagnosis of left leg radiculopathy. Dr. Sandifer identified the grade modifiers for functional history as two, physical examination as two and clinical studies as two. He concluded that appellant had 20 percent left lower extremity impairment.

On July 21, 2009 the Office medical adviser reviewed the evidence of record. He noted that Dr. Sandifer utilized Table 17-4 on page 571 of the sixth edition of the A.M.A., *Guides* in reaching his impairment determination, and then converted the whole person impairment provided by Table 17-4 to a lower extremity impairment. The Office medical adviser concurred with Dr. Sandifer's finding of 20 percent lower extremity impairment.

By decision dated November 16, 2009, the Office granted appellant a schedule award for 20 percent permanent impairment of the left lower extremity. The period of the award ran for 57.6 weeks from June 1, 2009 to July 9, 2010.

On appeal appellant contends that her work injury caused impairment to her right lower extremity and requested further development of the medical evidence on the extent of impairment to both lower extremities. She described her difficulties performing the activities of daily living.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,¹ and its implementing federal regulations,² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.³ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴ Effective May 1, 2009, the Office adopted the sixth edition of the A.M.A., *Guides*⁵ as the appropriate edition for all awards issued after that date.⁶

A schedule award is not payable for loss, or loss of use, of a part of the body that is not specifically enumerated in the schedule.⁷ Section 8107 and its implementing regulations do not provide for schedule awards for impairment to the back, spine or the body as a whole. The back is specifically excluded from the definition of organ.⁸ To the extent that the schedule award provisions include the extremities, an employee may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originates in the spine.⁹

ANALYSIS

The Office accepted that on October 22, 1996 appellant sustained lumbar sprain, spinal stenosis and a displaced lumbar intervertebral disc in the performance of duty. On November 17, 2008 appellant filed a claim for a schedule award. Her treating physician found she had no permanent impairment. The Office referred appellant to Dr. Sandifer for a second opinion impairment evaluation. On June 2, 2009 Dr. Sandifer diagnosed spinal stenosis at L4-5 and L5-S1 by MRI scan. He further found weakness in the left plantar flexors of Grade 4/5 and in the left extensor hallucis longus and dorsiflexors of Grade 3/5. Dr. Sandifer found that appellant had 20 percent permanent impairment of the left lower extremity. He noted that she

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *Ausbon N. Johnson*, 50 ECAB 304 (1999).

⁴ *Supra* note 2.

⁵ A.M.A., *Guides* (6th ed. 2008).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

⁷ *See Anna V. Burke*, 57 ECAB 521 (2006); *Patricia J. Horney*, 56 ECAB 256 (2005).

⁸ *See Jesse Mendoza*, 54 ECAB 802 (2003); *Tomas Martinez*, 54 ECAB 623 (2003).

⁹ *George E. Williams*, 44 ECAB 530 (1993).

had radiculopathy from the L5 and S1 nerve roots but determined that the sixth edition of the A.M.A., *Guides* did not provide a rating based on impairments of nonperipheral nerves. On July 21, 2009 an Office medical adviser reviewed Dr. Sandifer's findings and concurred with his conclusion.¹⁰ There is no evidence supporting that appellant has a greater left lower extremity impairment.

On appeal appellant contends that she is also entitled to a schedule award for the right leg. The Board's jurisdiction, however, is limited to reviewing final decisions of the Office.¹¹ The Office has not issued a decision on this issue and thus it is not before the Board.

Appellant further asserted that she experienced difficulty performing activities of daily living. The amount payable pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities.¹² The number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete loss of use of the leg, the maximum number of weeks of compensation is 288. Since appellant's permanent impairment of the left leg is 20 percent, she is entitled to 20 percent of 288 weeks, or 57.6 weeks of compensation, which is consistent with the number of weeks covered by the schedule award she received.

CONCLUSION

The Board finds that appellant has no more than 20 percent permanent impairment of the left leg.

¹⁰ The Office medical adviser indicated that Dr. Sandifer used Table 17-4 of the sixth edition of the A.M.A., *Guides* in reaching his impairment rating. The Board notes that Table 17-4 is relevant to determining impairments of the lumbar spine; however, any error is harmless as appellant has not submitted any evidence showing a greater permanent impairment of the left leg.

¹¹ 20 C.F.R. § 501.2(c).

¹² *Ruben Franco*, 54 ECAB 496 (2003).

ORDER

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

Issued: January 14, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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