U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY L. FISHER and DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, DEFENSE DISTRIBUTION REGION WEST, Stockton, Calif.

Docket No. 97-310; Submitted on the Record;
Issued May 6, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained greater than a 15 percent permanent impairment of the right leg for which he received a schedule award.

On November 4, 1994 appellant, then a 33-year-old material handler, sustained a lumbar sprain and herniated nucleus pulposus at L5-S1 in the performance of duty while pushing a crate off of a table.

By letter dated March 30, 1995, the Office of Workers' Compensation Programs placed appellant on the periodic compensation rolls to receive compensation benefits for temporary total disability.

On April 25, 1995 appellant underwent back surgery, a laminectomy at L5-S1.

In a report dated August 25, 1995, Dr. Kristi Self, a Board-certified physiatrist, provided a history of appellant's condition and findings on examination. She stated that, based upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (fourth edition 1993), appellant had an impairment rating of 20 percent of the whole body.

On September 7, 1995 appellant filed a claim for a schedule award.

By letter dated December 1, 1995, the Office asked Dr. Self to provide additional information so that an impairment rating could be determined. The Office asked Dr. Self to refer to Table 83 at page 130 of the A.M.A., *Guides* and to Tables 11 and 12 at pages 48 and 49 in providing her impairment estimate.

In a report dated February 23, 1996, Dr. Self stated that, using Table 83 at page 130 of the A.M.A., *Guides*, she had determined a rating of 20 percent attributable to the S1 nerve root, 15 percent to the L5 nerve root and 10 percent to the L4 nerve root which equalled a 45 percent

impairment of the right lower extremity. Dr. Self did not include Tables 11 and 12 in her calculations.

Because Dr. Self did not provide an impairment rating which correctly applied the procedures set forth in the A.M.A., *Guides,* the Office's district medical adviser recommended that appellant be evaluated by a physician familiar with Office procedures and the A.M.A., *Guides*.

By letter dated June 5, 1996, the Office referred appellant, along with copies of the medical records, to Dr. Samuel T. Moore, a Board-certified orthopedic surgeon, for an examination and evaluation as to the extent of appellant's employment-related permanent impairment.

In a report dated June 26, 1996, Dr. Moore provided a history of appellant's condition and findings on examination. He stated his opinion that pain and sensory loss in the right lower extremity were not of considerable significance and that "this is reflected in the [A.M.A., *Guides*] particularly when there is a nonanatomical type of pain distribution and numbness." Dr. Moore determined that appellant had a permanent impairment of the right lower extremity of 25 percent based upon a 10 percent permanent impairment due to sensory loss (five percent for the L5 nerve root, five percent for the S1 nerve root and 0 percent for the L4 nerve root) and a 15 percent permanent impairment due to motor loss (five percent each for the L5, L4 and S1 nerve roots) in the right lower extremity in the fourth and fifth lumbar nerve root and the sacral nerve root. In making his determination, Dr. Moore did not indicate that he had applied Table 83 at page 130.

By letter dated August 20, 1996, in response to a letter from the Office noting that he had failed to apply Table 83, Dr. Moore submitted a new evaluation in which he determined that appellant had a 6 percent permanent impairment due to sensory loss according to Table 83 at page 130 of the A.M.A., *Guides*. He multiplied a 10 percent impairment of the L5 nerve root by a maximum of 37 percent equalling a 4 percent impairment and multiplied a 10 percent impairment of the S1 nerve root by a 20 percent maximum impairment equalling a 2 percent impairment, with a total impairment for sensory loss of 6 percent.[1] Also based upon Table 83 at page 130, he multiplied a 10 percent impairment of the L4 nerve root by the 34 maximum percent of impairment equalling a 3 percent impairment, multiplied a 15 percent impairment of the L5 nerve root by the maximum 37 percent impairment equalling a 6 percent impairment, and multiplied a 15 percent impairment of the S1 nerve root by a maximum 20 percent impairment equalling a 3 percent impairment, with a total impairment for motor loss of 12 percent. He added the 6 percent sensory loss and 12 percent motor loss and determined that appellant had an 18 percent permanent impairment of the right leg.

In a report dated September 18, 1996, Dr. H. Mobley, the district medical adviser, determined, based upon the evidence of record and with particular attention to the reports of Dr. Moore, that appellant had a 15 percent impairment of the right lower extremity based upon the fourth edition of the A.M.A., *Guides*. Using Table 83 at page 130 and Table 11 at page 48 of

[1] As noted above, Dr. Moore found no sensory loss attributable to the L4 nerve root.

the A.M.A., *Guides*, he determined that appellant had a 2 percent permanent impairment of the right lower extremity due to pain or sensory deficit (1 percent each for the L5 and S1 nerve roots). Dr. Mobley determined that appellant had a 13 percent permanent impairment due to motor deficit based upon Table 12 at page 49 (4 percent for the L4 nerve root, 6 percent for the L5 root and 3 percent for the S1 root) for a combined permanent impairment of 15 percent.[2]

By decision dated September 23, 1996, the Office granted appellant a schedule award based upon a 15 percent permanent impairment of the right leg.

The Board finds that appellant sustained no more than a 15 percent permanent impairment of the right leg for which he received a schedule award.

An employee seeking compensation under the Act[3] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative, and substantial evidence,[4] including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.[5]

Section 8107 of the 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.[6] 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 justice for all claimants the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.[7]

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member of function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment."[8] This description

[2] Dr. Mobley, the district medical adviser, stated that he used Grade 1 from Table 12 on page 49 regarding motor deficit but it appears that he meant Grade 4 which corresponds to his percentages of 10 percent for the L4 nerve root and 15 percent for the L5 and S1 nerve roots.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

[5] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] 5 U.S.C. § 8107(a).

[7] *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

[8] Federal (FECA) Procedure Manual, Part -- 2 Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995); *see John H. Smith*, 41 ECAB 444, 448 (1990).

must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.[9]

In his June 26, 1996 report, Dr. Moore, the Board-certified orthopedic surgeon and Office referral physician, opined that appellant had a 25 percent permanent impairment of the right leg but he did not correctly apply the A.M.A., *Guides* procedures. In his August 20, 1996 report, he correctly applied the procedures regarding determination of motor impairment but he did not apply the correct maximum percentages from Table 83 on page 130 regarding sensory deficit or pain. For the L5 and S1 nerve roots he applied maximum percentages of 37 percent and 20 percent, respectively, but Table 83 provides maximum percentages of 5 percent for each nerve root. The 37 percent and 20 percent maximums apply only to the strength (motor) deficit in Table 83.

In a report dated September 18, 1996, Dr. Mobley, the Office medical adviser, correctly applied Dr. Moore's findings to the Office's procedures and A.M.A., *Guides.* Applying Dr. Moore's findings to Table 83 at page 130 of the A.M.A., *Guides* and Tables 11 and 12 at pages 48 and 49, he determined that appellant had a 15 percent permanent impairment of the right leg. The Office then granted appellant a schedule award based upon a 15 percent permanent impairment of the right leg in its September 18, 1996 decision. As the report of the Dr. Mobley provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.[10]

There is no medical evidence, based upon correct application of the Office's procedures and the A.M.A., *Guides* which establishes that appellant has more than a 15 percent permanent impairment of the right leg.

In her August 25, 1995 report, Dr. Self, appellant's attending Board-certified physiatrist, opined that appellant had a 20 percent permanent impairment of the whole body but the Federal Employees' Compensation Act does not provide for a schedule award to be granted for the whole body.[11]

In her February 23, 1996 report, Dr. Self opined that appellant had a 45 percent permanent impairment of the right leg but she failed to apply Tables 11 and 12 to her findings regarding Table 83, as required in the procedures set forth in the A.M.A., *Guides.* Therefore this report cannot be used as the basis for determining appellant's schedule award.

[9] *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

[10] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

[11] A schedule award is not payable under section 8107 of the Act for an impairment of the whole person; *see Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

The decision of the Office of Workers' Compensation Programs dated September 23, 1996 is affirmed.

Dated, Washington, D.C.
May 6, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member