

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARL G. MOLLOHAN and U.S. POSTAL SERVICE,
POST OFFICE, Fairborn, OH

*Docket No. 98-2550; Submitted on the Record;
Issued April 5, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has more than a 32 percent permanent impairment to the right leg or 20 percent impairment to the left leg.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a permanent aggravation of degenerative disc disease causally related to factors of his federal employment. By decision dated January 10, 1994, the Office issued a schedule award for 32 percent impairment to the right leg and 20 percent permanent impairment to the left leg. The degree of impairment was determined by application of the third edition revised of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In a decision dated September 23, 1997, the Office determined that appellant was not entitled to an additional schedule award. By decision dated July 29, 1998, an Office hearing representative affirmed the September 23, 1997 decision.

The Board has reviewed the record and finds that the evidence requires further development.

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. § 10.304(b).

justice for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.²

In the present case, the Office undertook additional development of the evidence after issuing the January 10, 1994 schedule award. Appellant had submitted reports from Dr. Joseph E. Olszewski, a neurologist, and the Office referred the case record to a medical adviser. In a report dated November 8, 1996, the Office medical adviser asserted that, under the fourth edition of the A.M.A., *Guides*, appellant now had a 52 percent impairment to the right leg, but the information was insufficient to determine impairment to the left leg.

The Office sent a letter dated November 19, 1996 to Dr. Olszewski requesting an opinion as to whether appellant's impairment "increased or worsened" since 1993. In a report dated December 5, 1996, Dr. Olszewski opined that appellant's impairment had worsened. The Office then sent a May 23, 1997 letter to Dr. Olszewski, stating that he had not indicated that the worsening was due to appellant's employment.³ The September 23, 1997 Office decision stated that there was no medical evidence to support a worsening of appellant's work-related condition.

It is not clear from the record whether the Office was attempting to deny an additional schedule award on the grounds that (1) the current impairment to the legs was not causally related to the employment injury, or (2) the impairment was not greater than the 32 percent for the left leg and 20 percent for the right leg, or (3) both of these reasons.⁴ With respect to causal relationship, the first indication that this was an issue is stated in a May 23, 1997 letter to Dr. Olszewski, noting a report from 1983 that referred to abnormal EMG results as most likely due to progressive nerve disease and not to spinal pathology. The schedule award in this case, however, was not issued until 1994, and was based on the neurologic examination of Dr. Olszewski dated September 3, 1993. There is no probative evidence from the attending physician, or the Office medical adviser, that the impairments to the right and left leg described in 1996 were unrelated to the employment injury.

With respect to a "worsening" of appellant's condition, the Board notes that the January 10, 1994 schedule award was based on the third edition revised of the A.M.A., *Guides*. When a claimant seeks an increased schedule award, the permanent impairment is calculated under the current edition of the A.M.A., *Guides*, in this case the fourth edition.⁵ If the current edition of the A.M.A., *Guides* establishes a greater impairment than that previously received, the claimant is entitled to an additional schedule award.

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

³ The Office stated that evidence from 1983 reported that electromyogram (EMG) abnormalities were most likely due to progressive nerve disease and not spinal pathology.

⁴ The September 23, 1997 decision appears to rely on causal relationship; the hearing representative's decision refers to the Office medical adviser's opinion as to the degree of impairment found.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(b)(4) (March 1995).

In this case, the Office medical adviser did indicate that appellant's right leg impairment was greater than 32 percent, although he did not fully explain how the tables were applied.⁶ Since the Office referred the case record for additional development, and received evidence supporting an additional impairment to the right leg, the case will be remanded to the Office.⁷ On remand, the Office should secure medical evidence that contains a clear description of the impairment to the right and left legs, and a reasoned opinion as to the degree of permanent impairment causally related to the employment injury under the current edition of the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated July 29, 1998 and September 23, 1997 are set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
April 5, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁶ The medical adviser indicated, for example, that under Table 68 appellant had a 15 percent motor impairment. Although the affected muscle was identified, Table 68 requires identifying the specific nerve and then estimating the impairment based on the maximum for that nerve. A.M.A., *Guides*, 89, Table 68.

⁷ See, e.g., *Mae Z. Hackett*, 34 ECAB 1421 (1983).