

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEO N. PALILEO and DEPARTMENT OF THE TREASURY,
U.S. MINT, San Francisco, CA

*Docket No. 98-1347; Submitted on the Record;
Issued March 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has more than 13 percent permanent use of the right leg for which he received a schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim for a strain of the low back and aggravation of lumbar discogenic disease. Appellant filed a claim for a schedule award.

In a report dated October 29, 1997, Dr. Alan G. Zacharia, an orthopedic surgeon, considered appellant's history of injury, reviewed a computerized axial tomography (CAT) scan, a magnetic resonance imaging (MRI) scan, and reviewed appellant's medical records. He stated that it was not unreasonable for appellant to undergo CAT discography which would be necessary for a patient with the ambiguous and disputed findings. Dr. Zacharia stated that, absent authorization to proceed "with such work-up," appellant remained permanent and stationary.

In a report dated February 11, 1998, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon and referral physician, considered appellant's history of injury, reviewed the medical records and diagnosed chronic right lumbar radiculopathy involving primarily right L5 nerve root and lumbar spinal stenosis. He stated that, utilizing the unilateral spinal nerve root impairment affecting the lower extremity, Table 83(5), page 130, appellant had Grade 3 pain and decreased sensation of the L5 nerve root which interfered with function 60 percent, Table 11, page 48, and resulted in a 3 percent impairment of his right lower extremity for pain interfering with function.

Dr. Harris stated that appellant had Grade IV muscle strength of 25 percent, Table 12, page 49, of the L5 nerve root, Table 83(37), page 130, resulting in a 10 percent impairment for muscle weakness. He combined the values for a 10 percent impairment for muscle weakness and

3 percent impairment for pain interfering with function, resulting in a 13 percent impairment of the right lower extremity.

By decision dated February 20, 1998, the Office awarded appellant a schedule award for a 13 percent permanent loss of use of the right leg.

The Board finds that appellant has no greater than 13 percent permanent loss of use of the right leg.

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function, or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² 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.³

In the present case, although, in his February 11, 1998 report, Dr. Harris did not expressly state that he used the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition 1994), all his calculations and references to page numbers and tables are consistent with the use of the A.M.A., *Guides* (fourth edition 1994). He used Table 83, page 130 and Table 11, page 48 to determine that appellant had Grade 3 pain and decreased sensation of the L5 nerve root which interfered 60 percent with function and resulted in a 3 percent impairment of his right lower extremity. He used Table 12, page 49 and Table 83, page 130 to determine that appellant's Grade IV muscle strength of 25 percent of the L5 nerve root resulted in a 10 percent impairment for muscle weakness. Combining the values for 10 percent muscle weakness and 3 percent impairment for pain interfering with function, Dr. Harris obtained a 13 percent impairment of the right lower extremity.

On appeal, appellant contends that the degree and nature of his permanent disability should be changed to a lower back injury consisting of a sprain and strain lumbar II and a herniated nuclear pulposus. Neither the Act nor regulations provide for the payment of a schedule award for the permanent loss of use of the back.⁴ Appellant has not submitted evidence showing that he has more than a 13 percent permanent loss of use of the right leg.

¹ 5 U.S.C. § 8107 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

³ *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

⁴ *See* 5 U.S.C. § 8107(c); *George E. Williams*, 44 ECAB 530, 533 (1993).

The decision of the Office of Workers' Compensation Programs dated February 20, 1998 is hereby affirmed.

Dated, Washington, D.C.
March 8, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member