

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERYL L. DOLIN and FEDERAL EMERGENCY MANAGEMENT
AGENCY, EASTERN DISTRICT, Atlanta, GA

*Docket No. 99-480; Submitted on the Record;
Issued October 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than an 11 percent permanent impairment of the left lower extremity, for which she received a schedule award.

On October 15, 1993 appellant, a public assistance inspector, sustained an injury while in the performance of her duties when she tripped and twisted her left knee. The Office of Workers' Compensation Programs accepted her claim for a left knee sprain and reflex sympathetic dystrophy (RSD) of the left knee.

The Office asked appellant's attending orthopedic surgeon, Dr. David G. Lehrman, to evaluate her permanent impairment using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). In a report dated November 11, 1996, he diagnosed chondromalacia patella and reflex sympathetic dystrophy. Dr. Lehrman found that appellant had reached maximum medical improvement on July 20, 1995. Appellant had no abnormality in range of motion. Ankylosis and prosthetics were not applicable. Dr. Lehrman estimated a 30 percent impairment of the lower extremity due to weakness, atrophy, pain or discomfort and this was his recommendation for appellant's impairment rating.

An Office medical adviser determined that additional information was needed. On January 28, 1997 Dr. Lehrman reported that under the A.M.A., *Guides* appellant's pain was Class 3, "which is between 26 [to] 60 [percent]." He identified the sural nerve as the affected nerve and noted one inch of atrophy, "which would give her a Grade IV active movement against gravity with some resistance which is a 1 [to] 25 [percent] motor deficit which would be the result of quadriceps involvement involving basically extension of the left lower extremity."

The Office medical adviser reviewed Dr. Lehrman's findings and determined that appellant had an 11 percent permanent impairment of the left lower extremity due to atrophy.

On March 6, 1997 the Office issued a schedule award for an 11 percent permanent impairment of the left lower extremity.

Appellant disagreed with the percentage awarded and requested an oral hearing before an Office hearing representative. Following the hearing, which was held on March 31, 1998, a second Office medical adviser reported that impairment based on RSD was not appropriate: Dr. Lehrman had reported that appellant's primary problem was involvement of the sural nerve and a January 28, 1998 neurological report revealed that appellant had normal reflexes and no muscle atrophy.

In a decision dated July 2, 1998, the Office hearing representative affirmed the March 6, 1997 schedule award.

Appellant requested reconsideration and submitted additional evidence. On June 30, 1998 Dr. Lehrman reported that appellant had additional impairment due to her sympathetic injury. Using Table 20, page 151, he rated appellant's pain Class II with a 10 percent impairment to the lower extremity. Using Table 21, Dr. Lehrman rated her weakness Grade IV also with a deficit of 10 percent. In addition, he reported that appellant's chondromalacia represented approximately a 5 percent impairment. Overall he rated appellant's impairment at 30 to 40 percent.

On September 23, 1998 the first Office medical adviser reported that Dr. Lehrman had provided no basis for impairment due to pain and sensory deficit other than the sural nerve. He advised that appellant could receive no additional impairment rating based on loss of motor function as this was already covered by the 11 percent impairment for atrophy. Finally, the Office medical adviser noted that Dr. Lehrman had not evaluated impairment for chondromalacia patella by Roentgenographic examination, which the A.M.A., *Guides* required.

In a decision dated September 30, 1998, the Office reviewed the merits of appellant's case and denied modification of its prior decision.

The Board finds that appellant has no more than an 11 percent permanent impairment of the left lower extremity, for which she received a schedule award.

Section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations² authorize the payment of schedule awards for the loss or permanent impairment of specified members, functions or organs of the body. Neither the Act nor the regulations, however, specify how the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as the standard for determining the percentage of impairment and the Board has concurred in such adoption.³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ See, e.g., *Leisa D. Vassar*, 40 ECAB 1287 (1989).

The Office accepted that appellant sustained a left knee sprain and RSD of the left knee while in the performance of her duties. The A.M.A., *Guides* explains that RSD is a disturbance of the sympathetic nervous system characterized by pain, swelling, stiffness and discoloration, which may follow a sprain, fracture or nerve or blood vessel injury. The A.M.A., *Guides* also explains that when these conditions occur in the lower extremity, they should be evaluated as for the upper extremity.⁴

The A.M.A., *Guides*, page 56, specifies that the impairment secondary to RSD of the upper extremity is derived by rating the impairment due to loss of motion of each joint involved, rating the sensory deficit or pain impairment according to instructions in that section, rating the motor deficit impairment of the injured peripheral nerve, if it applies, and then combining the appropriate impairment percents using the Combined Values Chart at page 322. As the A.M.A., *Guides* directs, the Board will follow this procedure to determine whether the clinical findings reported by appellant's attending physician demonstrate more than an 11 percent permanent impairment of the left lower extremity.

Dr. Lehrman reported on November 11, 1996 that appellant had no abnormality in range of motion. Appellant therefore has no impairment due to loss of motion.

As for impairment due to sensory deficit or pain, Dr. Lehrman identified the affected nerve as the sural nerve, which has a maximum impairment value of 2 percent for sensory impairment.⁵ He also classified appellant's sensory deficit or pain as Grade 2, "Decreased sensibility with or without abnormal sensation or pain, which is forgotten during activity." From a range of 1 to 25, Dr. Lehrman reported on June 30, 1998 that appellant's sensory deficit was 10 percent. Multiplying the maximum impairment value of 2 percent by the severity of the sensory deficit, 10 percent, gives an impairment of 0.2 percent due to pain or sensory deficit, according to the procedures set forth at Table 11, page 48.⁶

Following similar procedures for determining impairment due to loss of power and motor deficits, the sural nerve has a maximum impairment value of zero for motor deficits, indicating that it is not a motor nerve.⁷ Accordingly, regardless of whether appellant has a 10 percent motor deficit, described as "active movement against gravity with some resistance," multiplying the maximum impairment value of zero percent by the percentage motor deficit gives no impairment due to loss of power and motor deficit.⁸

With a zero percent impairment due to loss of motion, a 0.2 percent impairment due to pain or sensory deficit and a zero percent impairment due to loss of power and motor deficit,

⁴ A.M.A., *Guides* 89 (4th ed. 1993).

⁵ Table 68, page 89.

⁶ These procedures are reproduced on page 151 of the A.M.A., *Guides*.

⁷ The nervus suralis is in fact a general sensory nerve. *DORLAND'S ILLUSTRATED Medical Dictionary* 1124 (27th ed. 1988).

⁸ Table 12, page 49.

appellant has no more than a 0.2 percent impairment of the left lower extremity secondary to RSD, according to the standardized procedures set forth in the A.M.A., *Guides*.⁹ This rounds to a zero percent impairment.¹⁰

Regarding appellant's chondromalacia patella, Table 62, page 83, provides a method for evaluating such impairments based on roentgenographically determined cartilage intervals. Dr. Lehrman did not follow this procedure. His estimate of a five percent impairment due to chondromalacia patella therefore has little probative value.

With a 0 percent impairment secondary to RSD and an unsupported 5 percent impairment due to chondromalacia patella, the evidence in this case fails to demonstrate that appellant has more than an 11 percent impairment of the left lower extremity.

The September 30 and July 2, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
October 6, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ The smallest value that can be combined under the Combined Values Chart on page 322 is 1 percent.

¹⁰ *Cf.* Federal (FECA) Procedure Manual, Part 2 -- Claims, Schedule Awards, Chapter 3.700.4.b(2) (September 1994) (for hearing impairment, percentages should not be rounded until the final percent for award purposes is obtained. Fractions should be rounded down from .49 or up from .50).