

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACK CARROLL JOHNSON and DEPARTMENT OF THE ARMY,
FORT POLK, Fort Polk, LA

*Docket No. 99-2062; Submitted on the Record;
Issued October 12, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant has no more than a six percent permanent impairment of his right lower extremity for which he received a schedule award.

On August 17, 1994 appellant, then a 53-year-old mechanic, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained an injury to his lower back when he was working under a trailer on a creeper and the creeper slipped causing him to twist his back. Appellant stopped work August 18, 1994 and resumed work August 23, 1994. The Office accepted appellant's claim for lumbar strain, lumbar disc displacement and microdiscectomy.

By letter dated May 4, 1995, the Office referred appellant, together with a statement of accepted facts, the medical record and set of questions, to Dr. William F. Foster, a neurosurgeon, for a second opinion evaluation. In his report dated June 7, 1995, Dr. Foster provided a history of appellant's August 17, 1994 employment injury. Dr. Foster noted that appellant's flexion was restricted to 10 inches above the floor with pain over the left sciatic notch and moderately severe left muscle spasms. He also noted left extensor hallucis longus muscle weakness and diminished sensation following a left L5 dermatome. Dr. Foster diagnosed a left L4-5 disc problem that appeared to be related to his "on-the-job injury."

On December 7, 1995 appellant filed a claim for a schedule award (Form CA-7). In support of his claim, he submitted a brief report from Dr. John F. Raggio, a Board-certified neurosurgeon, dated October 23, 1995. The doctor stated:

"[Appellant] will have an overall 10 percent disability as the result of previous back surgery at L5-S1 and the current back surgery at L4-5. This will be a permanent partial disability to the body as a whole."

On August 27, 1996 the Office referred appellant to Dr. George P. Schneider, a Board-certified orthopedic surgeon, to evaluate appellant's entitlement to a schedule award. In his report dated October 21, 1996, he noted that appellant sustained a work-related injury in October 1994, while working on a creeper. Dr. Schneider noted the history of that injury including surgery performed by Dr. Raggio and appellant's complaints of right buttock and thigh pain and decreased sensation from the right dorsum of the right foot to his distal right leg. Magnetic resonance imaging (MRI) scan prior to appellant's last surgery revealed posterior L4-5 disc changes and spinal canal intrusion at L4-5. Dr. Schneider opined that appellant was developing "low-grade degenerative changes in the lower back with some secondary residuals of his previous nerve root involvement." He further stated:

"While the problem with the dis[c] protrusion from which [appellant] had suffered earlier appears to have been satisfactorily treated surgically, in my opinion, the secondary changes, which could have resulted from the pathological process itself, [are] causing his present problem. This very clearly dates back to his injury in October of 1994, while working on the creeper.... The sequence of [appellant's] problem is certainly job related."

By letters dated December 2, 1996 and March 17, 1997, the Office requested additional information from Dr. Schneider, including a permanent impairment rating according to the American Medical Association, (A.M.A.), *Guides to the Evaluation of Permanent Impairment* (4th ed. 1995)¹ and his opinion on whether appellant had reached maximum medical improvement. The Office also requested Dr. Schneider's objective findings, appellant's subjective complaints and the doctor's diagnosis.

By letter dated May 8, 1997, the Office referred appellant to Dr. David Steiner, a Board-certified orthopedic surgeon, for evaluation under the A.M.A., *Guides*. In his report and accompanying work capacity evaluation dated June 26, 1997, he stated that appellant sustained a work-related injury in October 1994 when he slipped from a creeper to the floor.² Dr. Steiner provided a history of that injury and appellant's medical history. Appellant complained that he was unable to lift more than 25 pounds and that he experienced a left leg "charley horse" every morning.

Dr. Steiner diagnosed degenerative disc disease and status post-laminectomies. Dr. Steiner found that appellant reached maximum medical improvement on May 20, 1996, the date he was released to full duty. He also found an absent right ankle jerk; decreased right leg sensation; sclerosis in the right S1 joint; rupture, dessiccation and narrowing of the L5-S1 and L4-5 discs; sclerotic changes of the right S1 joint and the L4-5 disc; and scar tissue. Appellant complained of back pain, stiffness and limited range of motion.

¹ A.M.A., *Guides*.

² The Board notes that both Drs. Schneider and Steiner referenced appellant's "October 1994" injury, which is inconsistent with appellant's schedule award claim relating to his August 17, 1994 employment injury. Their histories of appellant's "October 1994" injury, however, are similar to the facts recorded on appellant's claim for his August 17, 1994 employment injury.

Dr. Steiner attributed a 10 percent impairment rating to appellant's two ruptured disc surgeries, an additional 1 percent per surgery and an additional 2 percent to his second surgery equaling a 14 percent total disability rating. He stated that, according to the A.M.A., *Guides* page 13, appellant's two ruptured discs and surgeries resulted in a 14 percent whole body impairment.

By letter dated July 17, 1997, the Office advised Dr. Steiner of its method for quantifying lower back and lower extremity impairments according to the A.M.A., *Guides*. The Office requested that he render impairment ratings according to its procedures.

Dr. Steiner submitted a report dated July 24, 1997. In his report, he found that appellant sustained a 17.6 percent right lower extremity impairment and a 14 percent whole person loss for spinal disorders equaling a 29 percent whole body impairment. Dr. Steiner stated that he relied upon the A.M.A., *Guides*, page 130.

In a report dated July 31, 1998, Dr. H. Mobley, an Office medical adviser, found that appellant reached maximum medical improvement on June 2, 1997 and that he sustained a six percent right lower extremity impairment. Based on Dr. Steiner's reports and Tables 11 and 83 of the A.M.A., *Guides*,³ he determined that appellant had three percent sensory unilateral spinal nerve root impairments at L5 and S1. He combined those losses for a six percent total permanent impairment rating.

By letter dated July 31, 1998, the Office requested that Dr. Steiner review Dr. Mobley's findings and explain his determination that appellant sustained a 17.6 percent right lower extremity permanent impairment.

In response, Dr. Steiner submitted a brief report dated August 11, 1998. He stated: "In reviewing the [A.M.A., *Guides*] and my calculations, it is obvious that I incorrectly used the [A.M.A., *Guides*] and I am not sure how I arrived at 17.6 percent. However, the 6 percent that Dr. Mobley calculated is a correct figure, allowing a maximum impairment for the sensory loss."

In his report dated December 19, 1998, Dr. R. Meador, an Office medical adviser, concurred with Dr. Mobley's finding that appellant had a six percent permanent impairment of his right lower extremity.

By decision dated March 18, 1999, the Office granted appellant a schedule award for a 6 percent permanent impairment of his right lower extremity in the amount of \$10,023.40. The period of the award ran for 17.28 weeks from June 2 to September 30, 1997. The Office awarded appellant 75 percent of his weekly pay rate of \$730.45 for the period of the award.

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

³ A.M.A., *Guides* 48, 130.

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulation⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use of, specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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. The A.M.A., *Guides* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating scheduled losses.⁶ While a schedule award is not payable under the Act for an impairment of the back, a schedule award is payable for a permanent impairment of any of the extremities that is due to an employment-related back condition.⁷

The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the injury.⁸ Thus, an employee is not eligible to receive a schedule award until he has reached maximum medical improvement. Maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.⁹ The question of when maximum medical improvement has been reached is a factual one depending upon the medical findings in the record.¹⁰

In this case, the Board finds that Dr. Mobley, an Office medical adviser, properly rated appellant's impairment under the A.M.A., *Guides*. In his report dated July 31, 1998, Dr. Mobley relied upon Dr. Steiner's clinical findings but recommended a six percent permanent impairment rating for appellant's right lower extremity, due to unilateral spinal nerve root impairment, by combining appellant's three percent L5 and S1 sensory deficits. Dr. Mobley's six percent total permanent impairment rating conforms to the A.M.A., *Guides*, Tables 11 and 83 and the Combined Values Chart.¹¹ In his report dated August 11, 1998, Dr. Steiner amended his prior findings to conform to Dr. Mobley's recommendations.

Under the Act, a 6 percent permanent impairment rating of the lower extremity results in a schedule award of 17.28 weeks.¹² By multiplying appellant's 6 percent permanent impairment

⁴ 5 U.S.C. § 8107(c).

⁵ 20 C.F.R. § 10.404.

⁶ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

⁷ *Denise D. Cason*, 48 ECAB 530, 531 (1997); *S. Gordon McNeil*, 42 ECAB 140 (1990).

⁸ *Eugenia L. Smith*, 41 ECAB 409, 413 (1990); *Yolanda Librera*, 37 ECAB 388 (1986).

⁹ *Joseph R. Waples*, 44 ECAB 936, 940 (1993); *Marie J. Born*, 27 ECAB 623, 629 (1976).

¹⁰ *Joseph R. Waples*, *supra* note 9 at 940; *Marie J. Born*, *supra* note 9 at 630.

¹¹ A.M.A., *Guides* 130, 322-23.

¹² 5 U.S.C. § 8107(c)(2).

rating by 288, the maximum number of weeks for which a schedule award may be paid for loss of use of the leg, the Office determined that appellant was entitled to a schedule award of 17.28 weeks. Thus, the Office properly granted a schedule award for a six percent permanent impairment of the right lower extremity. Appellant is entitled to no more under the Act. There is no discretion on the part of the Office or the Board to grant additional compensation for such losses.¹³

The decision of the Office of Workers' Compensation Programs dated March 18, 1999 is hereby affirmed.

Dated, Washington, DC
October 12, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

¹³ *Donald Mueller*, 32 ECAB 33 (1980).