U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT BRODSLEY and U.S. POSTAL SERVICE,
PRESIDIO POST OFFICE, Monterey, CA

Docket No. 03-1511; Submitted on the Record;
Issued September 11, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a 15 percent permanent impairment of the right and left lower extremities for which he received a schedule award.

On March 20, 1987 appellant, then a 55-year-old finance clerk, filed a claim for a traumatic injury occurring on March 16, 1987 in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral strain and intervertebral disc disorder.

Appellant retired from the employing establishment on August 9, 1989. On June 1, 2000 appellant, through his representative, requested a schedule award.[1] By letter dated July 19, 2002, the Office referred appellant, together with a statement of accepted facts, to Dr. Kenneth Ishizue, a Board-certified orthopedic surgeon, for an impairment evaluation.

In a report dated August 28, 2002, Dr. Ishizue discussed appellant's complaints of numbness and pain without weakness in both legs. He noted that appellant related increased pain with "prolonged sitting, driving and lifting." On examination, Dr. Ishizue found "no evidence of muscular atrophy of the right or left legs." He diagnosed lumbar spinal stenosis and degenerative disc disease of the lumbar spine. He further found that as appellant's condition was progressively worsening, he had not reached maximum medical improvement. In an accompanying impairment form, Dr. Ishizue found that appellant had moderate pain and weakness graded as "active movement against gravity with some resistance." Dr. Ishizue indicated that appellant had no "neurological involvement."

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[1] Appellant previously requested a schedule award in October 1998. On October 14, 1998 the Office requested that Dr. Gus G. Halamandaris, a Board-certified neurosurgeon, provide an impairment rating for appellant. In a report dated November 11, 1998, Dr. Halamandaris informed the Office that he had only examined appellant one time and did not know if he had reached maximum medical improvement. In a follow-up report dated November 19, 1998, Dr. Halamandaris opined that appellant had reached maximum medical improvement.

On November 17, 2002 an Office medical adviser reviewed the evidence of record, including Dr. Ishizue's report, and concluded:

> "Noting the pathology at L3-4 and L4-5 on the recent MRI [magnetic resonance imaging] scan, one would select the L4 and L5 nerve roots as responsible for the lower extremity symptomatology.[2] According to Table 15-18, [u]nilateral [s]pinal [n]erve [i]mpairment [a]ffecting the [l]ower [e]xtremity, there would be a maximum 5 percent loss of function due to sensory deficit or pain for L4 and L5, or a total of a maximum 10 percent. One would grade the pain complaints a maximal [G]rade II as per Table 15-15, noting the moderate pain which would be assessed between a 61 and 80 percent sensory deficit. This reviewer would recommend a mean or a 70 percent of the 10 percent to arrive at a 7 percent impairment of each lower extremity or leg. Records do not document any loss of range of motion of any of the peripheral joints of either lower extremity for a 0 percent impairment. Records do not document lower extremity atrophy for a 0 percent impairment. Strength however was listed as 4/5 with no atrophy. This would be a maximal 1-25 percent motor deficit as per Table 15-16. One would utilize the maximum percent loss of function due to loss of strength of branches of L5 at 37 percent and 25 percent of this would be a 9.25 or rounded off to a 9 percent impairment for loss of strength. Utilizing the Combined Values Chart the 9 percent impairment for loss of strength, combined with 0 for loss of motion, combined with the 7 percent for the pain and/or altered sensation would be equivalent to a 15 percent impairment of each lower extremity or leg. Date of maximum medical improvement was reached years previously, with this reviewer recommending a date of November 19, 1998 when the individual was seen in follow up by Dr. Halamand[a]ris, who noted that maximum medical improvement was reached with the physician placing him in a work preclusion category.
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> "It should be noted that these two impairments, *i.e.*, the 15 percent impairment of each lower extremity or leg, represent the permanent partial impairment of each lower extremity as a result of the work-accepted back condition, and do not represent a whole-person award."

By decision dated March 11, 2003, the Office granted appellant a schedule award for a 15 percent loss of use of both the left and right lower extremities. The period of the award ran for 86.40 weeks from November 19, 1998 to July 15, 2000.

The Board finds that appellant has no more than a 15 percent permanent impairment of the right and left lower extremities for which he received a schedule award.

[2] An MRI of appellant's lumbar spine, performed on August 1, 2002, revealed a transitional segment at L5-S1, marked degeneration of the L2-3 disc, a central disc protrusion at L3-4 and "disc desiccation and mild annular bulging and mild foraminal stenosis due to facet joint overgrowth" at L3-4.

The schedule award provisions of the Federal Employees' Compensation Act,[3] and its implementing federal regulation,[4] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled 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 for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) as the uniform standard applicable to all claimants.[5] Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.[6]

Section 15.12 of the fifth edition of the A.M.A., *Guides* describes the method to be used for evaluation of impairment due to sensory and motor loss of the extremities. The nerves involved are first identified. Then, under Tables 15-15 and 15-16, the extent of any sensory and/or motor loss due to nerve impairment is to be determined, to be followed by determination of maximum impairment due to nerve dysfunction in Table 15-17 for the upper extremity and Table 15-18 for the lower extremity. The severity of the sensory or motor deficit is to be multiplied by the maximum value of the relevant nerve.[7]

In this case, the Office medical adviser properly applied the tables and pages of the A.M.A., *Guides* to the findings on physical examination of Dr. Ishizue. He determined that, according to Table 15-18 on page 424 of the A.M.A., *Guides*, the maximum percentage loss of function of the L4 and L5 nerve roots affecting the lower extremity was five percent, respectively. He graded appellant's complaints of moderate to severe pain as 70 percent pursuant to Table 15-15 on page 424 of the A.M.A., *Guides*. The Office medical adviser multiplied the 10 percent impairment due to the nerve root impairments at L4 and L5 by the graded 70 percent impairment due to pain which yielded a bilateral 7 percent impairment of both nerve roots. The Office medical adviser found that appellant had the maximum 25 percent loss of strength according to Table 15-16. He then multiplied 25 percent by 37 percent, the maximum percentage impairment due to loss of strength at L5 according to Table 15-18 on page 424 to find that appellant had a 9.25 percent bilateral impairment due to loss of strength, which he rounded down to 9 percent.[8] The Office medical adviser noted that appellant had no loss of range of motion. He combined the 7 percent impairment due to pain with the 9 percent impairment due to loss of strength and concluded that appellant had a 15 percent impairment of the right and left lower extremity.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] 20 C.F.R. § 10.404(a).

[6] *See* FECA Bulletin No. 01-5 (issued January 29, 2001).

[7] A.M.A., *Guides* at 423.

[8] The A.M.A., *Guides* provide that rounding off is to be to the nearest whole number. A.M.A., *Guides* at 9-10, 20.

As the Office medical adviser properly applied the A.M.A., *Guides* to Dr. Ishizue's findings, his report constitutes the weight of the medical evidence and establishes that appellant has no more than a 15 percent impairment of the right and left lower extremities.[9] Appellant has submitted no evidence showing that he has a greater impairment.

The decision of the Office of Workers' Compensation Programs dated March 11, 2003 is affirmed.

Dated, Washington, DC
September 11, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[9] Appellant contested the period of the schedule award. The Act provides that the loss of a leg entitles a claimant to 288 weeks of compensation. 5 U.S.C. § 8107. Appellant has a 15 percent impairment of his leg which entitles him to 43.20 weeks of compensation for each leg, or 86.40 total weeks of compensation. Under the schedule award provisions, he is entitled to no more. Appellant further alleges that he is entitled to compensation for testicular pain; however, he has not submitted any rationalized medical evidence providing an impairment rating for testicular pain in accordance with the A.M.A., *Guides*.