



On April 15, 2002 appellant filed a claim for a schedule award. In a report dated May 7, 2002, Dr. Paul A. Steurer, a Board-certified orthopedic surgeon, noted a history of injury, stating that, since his 1980 back surgery, appellant experienced persistent pain in the back and legs. Upon examination, the physician noted slight decreased sensation over the L5-S1 distribution to both legs. He noted that appellant's strength was probably a Grade 4 to 5 to dorsiflexion of the toes and feet, and plantar flexion of both toes and feet. Using Table 17-8 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed. 2001), he estimates a 12 percent loss of right leg strength and a 12 percent loss of left leg strength. Using Table 17-37, rated a 2 percent strength loss in both lower extremities. Using Table 16-10, Dr. Steurer classified appellant's sensory loss a Grade 2 at the lower end, allowing for a 60 percent sensory loss of the lower extremities. Applying Table 17-37, Dr. Steurer stated this resulted in a 10 percent impairment of the right and 10 percent impairment of the left lower extremity.<sup>1</sup> Combining these impairments, he found a 23 percent loss of both lower extremities. He stated that appellant's maximum medical improvement was reached on May 7, 2002.

In a July 8, 2002 report, Dr. Andrea Young, an Office medical adviser Board-certified in internal medicine, reviewed Dr. Steurer's May 7, 2002 report and found, appellant had a 22 percent impairment of each lower extremity. She also noted discrepancies in Dr. Steurer's May 7, 2002 report, including Dr. Steurer's finding of a slight sensory deficit in the L5-S1 distribution, "yet [he] grades it at 60 percent." The Office requested a supplemental opinion from Dr. Steurer who, on September 13, 2002, advised that he had documented his impairment rating and suggested that, if the Office was not satisfied, it should refer appellant for another opinion.

On October 7, 2002 the Office referred appellant to Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, for an evaluation regarding his lower extremity impairment. In a report dated November 1, 2002, Dr. Kaffen stated that on October 28, 2002 he reviewed appellant's medical records, conducted a physical examination and noted findings. He stated that appellant had a 17½ right calf circumference and an 18½ left calf circumference. Utilizing Table 16-10, page 482 of the A.M.A., *Guides*, Dr. Kaffen found no sensory deficit of the right or left extremity. He stated that the maximum impairment due to sensory deficit or pain was 20 percent which is Grade 4. Dr. Kaffen found that the maximum impairment for loss of the peroneal nerve was 42 percent of the lower extremity based on Table 17-37, page 552. He multiplied 42 percent by the 20 percent grade to arrive at an 8.4 percent impairment of the left lower extremity. Regarding the right lower extremity, Dr. Kaffen found no weakness or sensory deficit and rated the right lower extremity at a 0 (zero) percent impairment.

In a report dated November 20, 2002, Dr. Young reviewed the medical evidence and determined that appellant had a 9.5 percent impairment of the left lower extremity and a 0 (zero) percent impairment of the right lower extremity. She stated that her report was based on Dr. Kaffen's evaluation.

By decision dated December 2, 2002, the Office granted appellant a schedule award for a 10 percent impairment of the left lower extremity and a 0 (zero) percent impairment of the right

---

<sup>1</sup> The report included a typographical error allowing for a 105 percent left leg impairment; it should read 10 percent impairment.

lower extremity. The period of award ran for 28.8 weeks, from October 28, 2002 to May 17, 2003.

On December 5, 2002 appellant, through counsel, requested an oral hearing but amended that request on February 27, 2004, requesting a review of the written record. Appellant submitted several reports from Dr. Steurer in support of his request for review. In a report dated January 19, 2004, Dr. Steurer stated that appellant's range of motion was 30 degrees of flexion and 20 degrees of bending and rotation. On February 2, 2004 Dr. Steurer noted appellant's continued symptoms. On April 1, 2004 he noted that appellant's range of motion was 45 degrees of flexion and 20 degrees of bending and rotation.

By decision dated April 20, 2004, an Office hearing representative affirmed the December 2, 2002 schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> 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 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* (5<sup>th</sup> ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>4</sup>

### **ANALYSIS**

In the instant case, Dr. Young, an Office medical adviser, applied the A.M.A., *Guides* to the physical findings of Dr. Kaffen, a Board-certified orthopedic surgeon, to determine that appellant had a 9.5 percent impairment of the left lower extremity and a 0 percent impairment of the right lower extremity. She found that, according to the A.M.A., *Guides*, appellant had a Grade 4 sensory deficit of 20 percent of the peroneal nerve based on Table 16-10 at page 482.<sup>5</sup> She then multiplied the 20 percent grade by 5 percent, which is the maximum sensory impairment of the common peroneal nerve based on nerve deficit, Table 17-37, page 552. This equaled a 1 percent impairment due to sensory nerve deficit.<sup>6</sup> She then multiplied the 20 percent grade based on Table 16-11, page 484 of the A.M.A., *Guides* by 42 percent, the maximum

---

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> See 20 C.F.R. § 10.404; *Jacqueline S. Harris*, 54 ECAB \_\_\_\_ (Docket No. 02-303, issued October 4, 2002).

<sup>5</sup> Table 16-10, page 482, provides a range of impairment from 1 to 25 percent.

<sup>6</sup> The second opinion physician incorrectly multiplied the percentage of sensory deficit, 20 percent, times the percentage of motor deficit, 42 percent, to arrive at an 8.4 percent impairment of the left lower extremity.

allowed for motor impairment of the common peroneal nerve under Table 17-37, page 552. This equaled 8.4 percent left lower extremity impairment due to motor deficit. She then combined the values to arrive at 9.5 percent impairment of the left extremity. The Office medical adviser noted no weakness or sensory deficit of the right lower extremity and recommended a 0 (zero) percent right lower extremity impairment. She based the schedule award on Dr. Kaffen's report and found that appellant had reached maximum medical improvement in 1986.

With respect to Dr. Steurer's May 7, 2002 report in which he found a 23 percent impairment of each lower extremity, he did not adequately explain how his impairment determination was reached in accordance with the relevant standards of the A.M.A., *Guides*. Although Dr. Steurer determined that appellant sustained a 12 percent loss of leg strength in each leg, he also noted that appellant could walk without assistance or aides. Dr. Steurer based his impairment estimate on Table 17-8 of the A.M.A., *Guides*, but that section of the A.M.A., *Guides* cautions that weaknesses caused by an identifiable motor deficit of a specific peripheral nerve should be assessed according to the section 17.21 pertaining to peripheral nerve injuries.<sup>7</sup> He also noted that appellant's sensory deficit in the L5-S1 distribution was slight yet he graded appellant with a 60 percent sensory loss of the lower extremities. His rating is inconsistent with his finding of slight decreased sensation over the L5-S1 distribution. Therefore, Dr. Steurer's May 7, 2002 report is of diminished probative value in determining the impairment of appellant's lower extremities. Dr. Steurer's reports dated January 19, February 2 and April 1, 2004 listed symptoms, noted several range of motion findings and commented on a worsening of appellant's condition. However, the physician did not provide a reasoned opinion on the extent of permanent impairment pursuant to the A.M.A., *Guides*. These reports, therefore, are insufficient to establish entitlement to a greater schedule award.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he has more than a 10 percent impairment of the left lower extremity for which he received a schedule award or a 0 percent impairment of the right lower extremity.

---

<sup>7</sup> A.M.A., *Guides* at 531. See also Table 17.2, at 526, which indicates that muscle strength should not be evaluated together with peripheral nerve injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 20, 2004 is affirmed.

Issued: April 8, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member