

**United States Department of Labor
Employees' Compensation Appeals Board**

BARBARA J. EDWARDS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chesterfield, MO, Employer**

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**Docket No. 05-148
Issued: March 15, 2005**

Appearances:
Barbara J. Edwards, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On October 18, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated September 28, 2004. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award decision.

ISSUE

The issue is whether appellant has more than a three percent permanent impairment of her left lower extremity.

FACTUAL HISTORY

Appellant, a 40-year-old clerk, filed a Form CA-2 claim for benefits on July 12, 1995, alleging that she sustained a herniated disc condition in the performance of duty. The Office accepted the claim for herniated disc at L5-S1 on the left and authorized lumbar discectomy surgery for June 5, 1995.

On March 15, 2004 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her left lower extremity.

On August 31, 2004 the Office referred appellant to Dr. John Gragnani, a Board-certified orthopedic surgeon, for an impairment evaluation to determine whether she had sustained any permanent impairment resulting from her accepted condition.

In a report dated September 15, 2004, Dr. Gragnani submitted a report and impairment evaluation. Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*), Dr. Gragnani calculated a three percent permanent impairment of the left lower extremity. He stated that a sensory examination revealed a decrease in sensation in the S1 nerve root distribution in the dermatome of the left foot. Dr. Gragnani stated that there was no evidence of muscle weakness in the toe extensors or plantar flexors, and no ankle jerk on the left side. He derived a Grade 2 sensory loss pursuant to Table 15-15, page 424 of the A.M.A., *Guides*, which was approximately 61 percent, multiplied by 5 percent the S1 nerve root sensory deficit from Table 15-18 at page 424. Dr. Gragnani concluded that these measurements yielded a three percent rating for the left lower extremity.

In a memorandum/impairment evaluation dated September 20, 2004, an Office medical adviser adopted Dr. Gragnani's findings and conclusions and applied them to the applicable figures and tables of the A.M.A., *Guides* (fifth edition). The Office medical adviser determined that appellant had a three percent permanent impairment of the left lower extremity.

On September 28, 2004 the Office granted appellant a schedule award for a three percent impairment rating for the left lower extremity for the period March 1 to April 30, 1996, for a total of 8.64 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.³

ANALYSIS

In this case, the Office medical adviser, applying Dr. Gragnani's findings and calculations to the applicable tables and figures of the A.M.A., *Guides*, computed a three percent impairment of the left lower extremity based on a decrease of sensation in the S1 nerve root distribution in the dermatome of the left foot. The A.M.A., *Guides* state at page 423 that,

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 5 U.S.C. § 8107(c)(19).

³ 20 C.F.R. § 10.404.

although spinal cord involvement is rare in the lumbosacral spine because the cord typically ends at the L1 level, nerve root compression affecting the lower extremities is common. In determining an impairment rating based on spinal cord/nerve root involvement, the A.M.A., *Guides* recommend identifying the nerves involved based on the clinical evaluation and dermatome distribution charts, then determining the extent of any spinal cord involvement based on Tables 15-15 and 15-16. Pursuant to these guidelines, the A.M.A., *Guides* advise finding the maximum impairment due to nerve dysfunction of the lower extremity in Table 15-18, then multiplying the severity of the sensory deficit by the maximum value of the relevant nerve at Table 15-18.

In accordance with the above procedure, Dr. Gragnani stated that there was no evidence of muscle weakness in the toe extensors or plantar flexors, and no ankle jerk on the left side. The evidence of record indicates that appellant has a Grade 2 sensory loss pursuant to Table 15-15, page 424 of the A.M.A., *Guides*, which would be 61 percent, multiplied by 5 percent the S1 nerve root sensory deficit from Table 15-18 at page 424, equaling a 3 percent impairment of the lower extremity. The Office medical adviser adopted Dr. Gragnani's findings and conclusions to arrive at a three percent left lower extremity impairment.

As there is no other medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that appellant was not entitled to more than a three percent impairment of the left lower extremity.

CONCLUSION

The Board finds that appellant has no more than a three percent impairment of the left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2004 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 15, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member