United States Department of Labor
Employees' Compensation Appeals Board

A.R., Appellant	)	
and	)	**Docket No. 06-1866**
	)	**Issued: December 8, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 9, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs schedule award decision dated June 1, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained more than a seven percent permanent impairment of the right lower extremity and a six percent permanent impairment of the left lower extremity.

FACTUAL HISTORY

On September 9, 2004 appellant, then a 36-year-old letter carrier, filed an occupational disease claim alleging that he sustained a protruding disc in his lower back as a result of walking up and down stairs and pushing overloaded gurneys in the performance of duty. He first realized the disease or illness was caused or aggravated by his employment on May 20, 2004. Appellant

did not stop work. The Office accepted appellant's claim for a herniated disc at L5-S1 (permanent aggravation of radiculopathy) and radiculopathy at the S1 level (permanent aggravation). The Office also authorized lumbar epidural injections.

On February 17, 2006 appellant filed a claim for a schedule award.

Appellant submitted a February 14, 2006 report from Dr. Jacob Salomon, a Board-certified general surgeon, who noted appellant's history of injury and treatment, which included degenerative and mild hypertrophic changes at L5-S1 with moderate central to right paramedian disc herniation and inferior foraminal narrowing. Dr. Salomon advised that the herniation extended to the superior S1 end plate with inferior and foraminal narrowing laterally. He stated that recent diagnostic studies revealed S1 nerve root radiculopathy bilaterally. Dr. Salomon noted that appellant was not able to return to his regular work duties and that surgery would likely be needed. He examined appellant and utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (A.M.A., *Guides*) (5th ed. 2001). Dr. Salomon reported moderate pain, primarily when "he is on his feet for a long time doing lifting, bending and twisting." Dr. Salomon determined that appellant had an abnormal stance, with a tilt away from the pain to the left side and abnormal gait. Palpation revealed tenderness along the posterior superior iliac spine on the right side and paraspinal muscle tenderness and tenderness along the posterior spinous process at L5-S1. Dr. Salomon noted that appellant had forward flexion of 45 degrees, lateral bending to the right to approximately 45 degrees and to the left of 30 degrees with some end point pain. Regarding extension, he noted that appellant had extension to 35 degrees with some end point tenderness and difficulty walking on his toes, with less pain when walking on his heels. Dr. Salomon diagnosed early aggravated herniated disc at L5-S1 with bilateral Sl nerve root radiculopathy with residuals and opined that appellant reached maximum medical improvement on January 23, 2006.

Dr. Salomon noted that appellant was entitled to a rating for nerve root impingement as documented in the diagnostic reports. He referred to Table 15-15 for sensory deficit, Table 15-16 for motor deficit and Table 15-18 for the nerve root impairment.[1] Dr. Salomon also explained that the impairment for the S1 nerve root should be given bilaterally. For the right side, he determined that appellant had a motor deficit which equated to a Grade 4 of 25 percent due to the weakness of the plantar flexor, which he noted was innervated by the S1 nerve root bilaterally and which he indicated would by multiplied by the maximum percentage of loss of function due to strength loss of the S1 nerve root in Table 15-18, which was equal to 20 percent and which he determined resulted in 5 percent impairment for motor deficit of the right and left S1 nerve root. Dr. Salomon also provided impairment ratings for sensory deficits, noting that appellant had decreased sensation of the lateral calf bilaterally and the lateral foot, worse on the right. He provided appellant with a Grade 2 from Table 15-15 for decreased superficial cutaneous pain and tactile sensibility and increased protective sensibility due to halting gait and toe drop of 70 percent.[2] Regarding the right side, Dr. Salomon explained that it was always severe and that appellant would warrant a rating of 3 from Table 15-15 due to his distorted superficial tactile sensibility with some abnormal sensation and slight pain that interferes with

[1] A.M.A., *Guides* 424.

[2] *Id.*

some activities of 50 percent.[3] He multiplied this rating by the maximum percentage loss of function due to sensory deficit of pain on the S1 nerve root of 5 percent to obtain a total sensory deficit of the S1 nerve root on the right side of 3.5 percent, which he rounded up to 4 percent for the right. Dr. Salomon determined that the sensory loss of the S1 nerve root on the left would be 2.5 percent, which when rounded up was equal to 3 percent. He referred to the Combined Values Chart[4] and determined that appellant had a total right leg impairment of nine percent and a total left leg impairment of eight percent.

On March 19, 2006 an Office medical adviser noted appellant's history and utilized the fifth edition of the A.M.A., *Guides.* He advised that appellant had intermittent back pain and lower extremity radiculopathy as well as decreased plantar flexion strength bilaterally, minimal sensory changes and negative straight leg raising and advised that straight leg raising is considered positive when less than 45 degrees. Dr. Salomon explained that no impairment could be awarded to the spine or the body as a whole, only of the extremities. The Office medical adviser determined that appellant had two percent impairment to the right lower extremity for a Grade 4 pain/sensory deficit of 25 percent in the distribution of the right S1 nerve root and referred to Tables 15-15 and 15-18.[5] The Office medical adviser also determined that appellant had one percent impairment to the left lower extremity for a Grade 4 pain/sensory deficit of 20 percent in the distribution of the left S1 nerve root pursuant to Table 15-15 and 15-18.[6] The Office medical adviser noted that appellant had 5 percent for a Grade 4 strength deficit or 25 percent in the distribution of the S1 nerve root bilaterally according to Table 15- 16 and 15-18.[7] The Office medical adviser referred to the Combined Values Chart[8] and determined that appellant had a total of seven percent impairment to the right lower extremity and six percent to the left lower extremity. Appellant reached maximum medical improvement on January 23, 2006.

By decision dated June 1, 2006, the Office granted appellant a schedule award for a total of 37.44 weeks of compensation for a seven percent permanent impairment of the right lower extremity and a six percent permanent impairment of the left lower extremity.

[3] *Id.*

[4] A.M.A., *Guides* 604.

[5] A.M.A., *Guides* 424.

[6] *Id.*

[7] *Id.*

[8] A.M.A., *Guides* 604.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[9] and its implementing regulation[10] sets 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 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 implementing regulation as the appropriate standard for evaluating schedule losses.[11]

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 Table 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.[12]

ANALYSIS

The Board finds that the case is not in posture for decision on the extent of appellant's permanent impairment of the lower extremities due to a conflict in medical opinion.

In a report dated February 14, 2006, appellant's physician, Dr. Salomon utilized the A.M.A., *Guides*, indicated that appellant had attained maximum medical improvement on January 23, 2006 and opined that appellant was entitled to an impairment of nine percent of the right lower extremity and eight percent of the left lower extremity. He referred to Table 15-15 for sensory deficit, Table 15-16 for motor deficit and Table 15-18 for the nerve root impairment.[13]

The Board notes that both the Office medical adviser and Dr. Salomon were in agreement regarding the extent of appellant's motor deficit impairment rating, as both physicians properly followed the A.M.A., *Guides* and determined that appellant was entitled to an impairment of five percent for motor deficit of the right and left lower extremities due to the S1 nerve root. The Board notes that a motor deficit of Grade 4 or 25 percent was selected due to the weakness of the plantar flexor, which is innervated by the S1 nerve root bilaterally, multiplied by 20 percent or

[9] 5 U.S.C. § 8107.

[10] 20 C.F.R. § 10.404.

[11] *Id.*

[12] A.M.A., *Guides* 423.

[13] A.M.A., *Guides* 424.

the maximum percentage of loss of function due to strength loss of the S1 nerve root in Table 15-18.[14] This totals five percent impairment rating for motor deficit in both the right and left lower extremities.

However, regarding the extent of appellant's sensory deficit impairment, Dr. Salomon noted that appellant had decreased sensation of the lateral calf bilaterally and the lateral foot and he noted that right side was worse than the left. For the left lower extremity, he determined that appellant was entitled to a Grade 2 from Table 15-15[15] for decreased superficial cutaneous pain and tactile sensibility and increased protective sensibility due to halting gait and toe drop of 70 percent. Regarding the right side, which was more severe, Dr. Salomon determined that appellant would warrant a Grade 3 from Table 15-15 due to his distorted superficial tactile sensibility with some abnormal sensation and slight pain that interferes with some activities of 50 percent.[16] He multiplied this rating by the maximum percentage loss of function due to sensory deficit of pain on the S1 nerve root of 5 percent to obtain a total sensory deficit of the S1 nerve root on the right side of 3.5 percent, which he rounded up to 4 percent for the right. He determined that the sensory loss of the S1 nerve root on the left would be 2.5 percent, which when rounded up was equal to 3 percent. Dr. Salomon referred to the Combined Values Chart[17] and determined that appellant had a total right lower extremity impairment of nine percent and a total left lower extremity impairment of eight percent.

In a March 19, 2006 report, the Office medical adviser utilized the fifth edition of the A.M.A., *Guides* and was in agreement with Dr. Salomon regarding appellant's motor deficit, as he too concluded that appellant was entitled to an impairment of five percent for each lower extremity. However, regarding the extent of appellant's sensory deficits, the Office medical adviser determined that appellant had a two percent impairment of the right lower extremity and indicated that appellant had a Grade 4 pain/sensory deficit of 25 percent in the distribution of the right S1 nerve root and referred to Table 15-15 and 15-18.[18] The Office medical adviser determined that appellant had one percent impairment to the left lower extremity and also noted that appellant had a Grade 4 pain/sensory deficit of 20 percent in the distribution of the left S1 nerve root pursuant to Table 15-15 and 15-18.[19] The Office medical adviser referred to the Combined Values Chart[20] and determined that appellant was entitled to an award of seven percent to the right lower extremity and six percent to the left lower extremity and opined that appellant reached maximum medical improvement on January 23, 2006.

[14] *Id.*

[15] *Id*.

[16] *Id.*

[17] A.M.A., *Guides* 604.

[18] A.M.A., *Guides* 424.

[19] *Id.*

[20] A.M.A., *Guides* 604.

There is a conflict between Dr. Solomon, who found that appellant had a nine percent right lower extremity impairment and an eight percent left lower extremity impairment and the Office medical adviser, who found that appellant had a seven percent right lower extremity impairment and a six percent left lower extremity impairment. Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[21]

The case, therefore, shall be remanded for the Office to refer appellant for an impartial medical examination on the issue of the extent of his permanent impairment of the lower extremities.

CONCLUSION

The Board finds that the case is not in posture for decision on the extent of his lower extremity impairment due to a conflict in medical opinion.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 1, 2006 is set aide and remanded for further proceedings consistent with this opinion of the Board.

Issued: December 8, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[21] 5 U.S.C. § 8123(a); *Alfred R. Anderson*, 54 ECAB 179 (2002).