United States Department of Labor
Employees' Compensation Appeals Board

J.J., Appellant	)	
and	)	**Docket No. 06-359**
	)	**Issued: November 1, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Sneedville, TN, Employer	)	

Appearances:
Floyd W. Rhea, Esq, for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 2, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' schedule award decision dated October 17, 2005. 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 23 percent permanent impairment to his left leg and a 15 percent permanent impairment to his right leg.

FACTUAL HISTORY

This is the second appeal before the Board. Appellant, a 58-year-old letter carrier, filed a Form CA-1 claim for benefits, alleging that on August 6, 2003 he injured his lower back and both legs when he reached for a parcel in the rear seat of his mail truck. By decisions dated September 22 and December 18, 2003, the Office denied the claim. Appellant requested

reconsideration and submitted a December 24, 2003 report from Dr. Gregory Corradino, a Board-certified neurosurgeon, who stated:

> "[Appellant] was seen in our office initially on August 29, 2003 with complaints of low back and bilateral lower extremity pain. He has a history of a previous lumbar disc surgery in 2001…. [Appellant's] symptoms improved following that surgery with only some mild residual symptoms but he returned to work full time at [the employing establishment]. He gives a history of being reinjured on August 6[, 2003] while delivering mail and turning to look for a package. [Appellant] felt a sharp pain in his back which radiated down his left lower extremity. His symptoms have gotten progressively worse since that time.
>
> "A lumbar myelogram and postmyelographic computerized axial tomography scan was performed at Holston Valley and showed evidence of his prior surgery on the left at the L3-4 and L4-5 levels. There was a small disc protrusion at the L3-4 level causing some L4 nerve root compression at the site of his previous surgery. Given [appellant's] history, and given the fact that he did return to employment after his surgery and was working at regular duty without significant difficulty, we feel that his current symptoms are arising from the injury noted above."

In a report dated January 20, 2004, Dr. John A. Short, a family practitioner, noted appellant's medical history and stated that appellant had undergone a left-sided laminectomy and had experienced disc degeneration. He related findings of an April 15, 2002 magnetic resonance imaging scan which indicated findings consistent with left-sided nerve root compression and left-sided disc protrusion at L4-5. Dr. Short referred appellant to Dr. Corradino to consider possible surgery, but appellant was not found to have any condition which required surgical intervention. He indicated that appellant was unable to work and that he experienced pain with activity.

By decision dated April 28, 2004, the Office denied modification of the prior decisions. In a November 16, 2004 decision,[1] the Board set aside the Office's decisions and found that the Office erred by failing to consider medical evidence submitted prior to the April 28, 2004 decision, *i.e.*, Dr. Corradino's December 24, 2003 report and Dr. Short's January 20, 2004 report. The Board therefore set aside the Office's April 28, 2004 decision and remanded the case to the Office to fully consider appellant's evidence pertaining to whether he sustained an injury causally related to the August 6, 2003 employment incident. The complete facts of this case are set forth in the Board's November 16, 2004 decision and are herein incorporated by reference.

In a report dated January 8, 2005, Dr. Short stated:

> "I do feel that this situation will be permanent given the patient's severe symptoms as well as the findings on physical exam[ination]. I do not find any findings on physical exam[ination] that do not correspond with the patient's symptomatology. He did have marked decrease sensation in the lateral and anterior thigh with the left side worse than the right side and that he did have decreased sensation along the anterior shin on the left as well as the medial foot. I

[1] Docket No. 04-1617 (issued November 16, 2004).

do feel like this pain that he has in the leg is due to the nerve root compression. He does have an L5 from the herniated disc that he did suffer from his work-related injury."

Dr. Short diagnosed L5 nerve root compression, L5 radiculopathy and herniated nucleus pulposus at L5.

On February 8, 2005 the Office accepted the claim for L5 herniated nucleus pulposus with L5 nerve root compression and L5 radiculopathy.

In a report dated July 15, 2005, Dr. Short made impairment findings pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (A.M.A., *Guides*). He stated:

"[In] regards to his L5 radiculopathy and L5 distribution on the left, [appellant] is able to feel pain and some sensibility at present. He has absence of superficial pain, and tough sensibility is also absent. [Appellant] does have severe pain in his extremities at all times. It does require medication to help relieve some of the discomfort. This will make his classification at [G]rade 1 in the L5 distribution with a sensory loss of 81 to 99 percent with a maximum percentage of loss of function due to sensory deficit or pain in the L5 distribution being 5 percent based on a [G]rade 1 classification. This will give him a whole body percent loss of 95 percent in his L5 distribution. Percent maximum loss of function due to this is 37 percent. [Appellant] has active involvement in active movement against gravity with some resistance. Percent of lower deficit of 25 percent that would be a [G]rade 4 maximum body percent impairment based on his motor function in the L5 would be 9 percent of the total distribution being 14 percent whole body impairment. In regards to the remainder of his problems, following the injury of subsequent L5 nerve root compression. (sic) In the S1 distribution, he has a [G]rade 2 sensory loss with only deep cutaneous sensibility present and absent superficial intake sensibility with chronic pain in the area for percent deficit of 99 percent. Maximum percent loss of function due to sensory deficit or pain in the S1 distribution of five percent. It gives him a five percent in the S1 distribution. In regards to his strength in the S1 distribution, he has a [G]rade 4 with sensory loss of percent motor deficit of a maximum of 25 percent. Maximum percent body loss of function due to strength being 20 percent in the S1 distribution gives whole body 5 percent distribution in the S1 with total body of 10 percent.... [Appellant] also has maximum percent of loss of function due to sensory deficit in the L5 distribution also being five percent given whole body percent. In L5 distribution, he has percent maximum loss of function due to strength was 37 percent. He has active movement impairment against gravity in his extremity, also, with some resistance. Based on this finding, his percent motor deficit will be 25 percent putting him in a [G]rade 4 classification and based on motor function in the L5 distribution, we give him a 9 percent for a total distribution being 14 percent for whole body impairment on the right L5 distribution…."

In an impairment evaluation dated August 16, 2005, an Office medical adviser, relying on Dr. Short's findings and conclusions, found that appellant had a 23 percent permanent impairment to his left leg and a 15 percent permanent impairment to his right leg based on the A.M.A., *Guides* (fifth edition). He stated:

> "According to Dr. Short's report, appellant has left L5 and S1 radiculopathy and right L5 radiculopathy.
>
> "Left L5: Had sensory loss [G]rade 1 that according to Table 15-15 at page 424 of the A.M.A., *Guides* corresponds to 81 to 99 percent. The maximum sensory loss of L5 is five percent according to Table 15-18 of A.M.A., *Guides* at Table 15-18 (page 424). Multiplying 99 percent times 5 percent we get 5 percent due to sensory loss. [Appellant] had motor loss [G]rade 4 (according to Table 15-16 page 424 corresponds to 1 to 25 percent.) Maximum loss of L5 is 37 percent according to Table 15-18 at page 424. Multiplying 25 percent times 37 percent we get 9.25 percent, which equals 10 percent due to strength loss. Combining both we get 15 percent left lower extremity on account of L5.
>
> "Left S1: No sensory loss [G]rade 2, according to Table 15-15, page 424 corresponds to 61 to 80 percent. Maximum S1 loss is five percent. Multiplying 80 percent times 5 percent gives 4 percent due to sensory loss. He had a motor loss [G]rade 4, according to Table 15-16, page 424 which corresponds to 1 to 25 percent. The maximum loss of S1 (motor) is 20 percent according to Table 15-18, page 424. Multiplying 25 times 20 we get 5 percent due to motor loss. Combining motor and sensory loss we get nine percent left lower extremity impairment on account of S1. Combining L5 and S1 impairments we get 23 percent permanent partial impairment of the left lower extremity.
>
> "Right L5: Appellant has the same impairment he has for the left L5, that is 15 percent. This amounts to a 15 percent permanent partial impairment of the right lower extremity."

On October 17, 2005 the Office granted appellant a schedule award for a 23 percent permanent impairment to his left leg and a 15 percent permanent impairment to his right leg for the period July 15, 2005 to August 20, 2007, for a total of 109.43 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] 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.[3] However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For

[2] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[3] 5 U.S.C. § 8107(c)(19).

consistent results and to ensure 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.[4]

ANALYSIS

The Board finds that appellant has a 23 percent permanent impairment to his left leg and a 15 percent permanent impairment to his right leg. The method for determining impairment ratings based on spinal cord and nerve root impairments is outlined at Chapter 15, subsection 12, at page 423, of the A.M.A., *Guides*. This section states that, if any neural impairment is identified, the examiner must: (1) identify the nerve involved based on the clinical evaluation; (2) determine the extent of any sensory and motor loss due to nerve impairment based on Tables 15-15 and 15-16 at page 424; and (3) calculate the maximum impairment due to sensory and nerve dysfunction is calculated pursuant to Table 15-18 at page 424. In accordance with the above procedure, the Office medical adviser derived a sensory loss of Grade 1 at Table 15-15 at page 424 of the A.M.A., *Guides* by utilizing Dr. Short's finding of left-sided L5 radiculopathy. A Grade 1 sensory loss corresponds to a sensory deficit of 81 to 99 percent at Table 15-15. Relying on Table 15-18, page 424 of the A.M.A., *Guides*, he found that the maximum sensory loss for a unilateral spinal nerve root impairment affecting the lower extremity at L5 is five percent. Pursuant to the method outlined at page 422, the Office medical adviser then multiplied 5 percent times 99 percent, for a total 5 percent impairment due to sensory loss. As indicated by Table 15-16 for a Grade 4 motor grade loss from 1 to 25 percent, the Office medical adviser found that a total 5 percent impairment due to sensory loss, when multiplied by 5, totaled 25 percent. The Office medical adviser then took the maximum impairment for loss of function due to L5 nerve root impairment at Table 15-18, 37 percent, multiplied it times 25 percent, and derived a 9.25 percent impairment. He rounded off this 9.25 percent figure for a total 10 percent impairment due to strength loss. The Office medical adviser combined this with the 5 percent sensory loss to find a total 15 percent left lower extremity impairment due to L5 radiculopathy.

In calculating impairment for left-sided S1 radiculopathy, the Office medical adviser found a Grade 2 sensory loss at Table 15-15, which corresponds to a 61 to 80 percent sensory deficit. He took the maximum loss for a Grade 2 impairment, 80 percent, and multiplied this times the maximum 5 percent loss for S1 sensory deficit at Table 15-18 for a 4 percent impairment due to sensory loss. The Office medical adviser then found that appellant had a Grade 4 motor loss at S1, which corresponded to a 1 to 25 percent motor deficit impairment at Table 15-16. The Office medical adviser then found that the maximum loss for S1 motor deficit is 20 percent pursuant to Table 15-18. He multiplied 25, the maximum motor deficit at Table 15-16, times 20 for a 5 percent impairment due to motor loss. The Office medical adviser combined motor and sensory loss for a 9 percent left lower extremity impairment based on S1 radiculopathy, and combined L5 and S1 impairments for a 23 percent permanent impairment of the left lower extremity. Finally, the Office medical adviser calculated a 15 percent permanent impairment of the right lower extremity for right-sided L5 radiculopathy by using the same method he employed above for calculating left-sided L5 impairment.

[4] 20 C.F.R. § 10.404.

The Board finds that the Office's October 17, 2005 decision granting appellant a schedule award for a 23 percent permanent impairment to his left leg and a 15 percent permanent impairment to his right leg was properly based on the available medical evidence of record and calculated in accordance with the applicable tables of the A.M.A., *Guides*. As there is no other probative medical evidence establishing that appellant sustained any additional permanent impairment, the Board affirms the Office's finding that appellant was not entitled to more than a 23 percent permanent impairment to his left leg and a 15 percent permanent impairment to his right leg.

CONCLUSION

The Board finds that appellant has no more than a 23 percent permanent impairment to his left leg and a 15 percent permanent impairment to his right leg.

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 1, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board