United States Department of Labor
Employees' Compensation Appeals Board

T.F., Appellant	)	
and	)	**Docket No. 06-2181**
	)	**Issued: February 16, 2007**
DEPARMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Milwaukee, WI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 27, 2006 appellant filed a timely appeal from an August 3, 2006 decision of the Office of Workers' Compensation Programs finding that he was entitled to a schedule award for a 12 percent impairment of his right lower extremity and a 3 percent impairment of his left lower extremity. Pursuant to C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merit issue of the case.

ISSUE

The issue is whether appellant has more than a 12 percent impairment of his right lower extremity and a 3 percent impairment of his left lower extremity for which he received a schedule award.

FACTUAL HISTORY

On July 29, 1994 appellant, then a 55-year-old mechanic, filed a traumatic injury claim alleging that on July 27, 1994 he sustained injuries to his lower back. While stepping over a soil

conveyer on a wooden bench, he lost his balance. Appellant's claim was accepted for low back strain and later for permanent aggravation of a herniated disc at L4-5.

On March 21, 2002 appellant filed a claim for a schedule award. On September 19, 2002 the Office issued a schedule award for a 12 percent impairment of the right lower extremity and a 0 percent impairment of appellant's left lower extremity. On October 4, 2002 the Office modified this decision by finding that appellant was entitled to compensation at the augmented rate of 75 percent.

On September 26, 2005 appellant filed a claim for an increase in his schedule award. He submitted a June 10, 2005 medical report from Dr. Daniel A. Ladwig, a Board-certified orthopedic surgeon, who diagnosed a failed spinal fusion syndrome as well as disc disease at the nonoperated 3-4 level. Dr. Ladwig noted that appellant experienced chronic low back and leg discomfort with a marked decrease in his lumbar range of motion. He concluded:

> "According to the most recent guidelines, [appellant] is entitled to a 25 [percent] permanent disability secondary to his 2-level decompressive laminectomy and fusion and in addition to that an award of approximately [12 percent] due to the disease that exists at the nonoperated 3-4 level."

By memorandum dated April 13, 2006, the Office referred the case record to an Office medical adviser for an impairment rating. In a report dated April 17, 2006, the Office medical adviser noted that, since the prior impairment rating, appellant had undergone an insertion of an intrathecal catheter for pain management. Appellant continued to complain of low back pain radiating in both legs. The Office medical adviser stated:

> "Dr. Ladwig recommends [25 percent permanent impairment] secondary to the 2-level decompression and fusion. In addition, he recommends an additional [12 percent] due to the adjacent segment degeneration at L3-4. While it is unfortunate [that appellant] continues to have relatively disabling low back pain, the [Office] does not award [permanent partial impairment] for impairment in the axial skeleton. Rather, [permanent partial impairment] is only awarded for impairment in the extremities. Therefore, the only additional [permanent partial impairment] which is awarded at this time is for the left leg pain. Consequently, [three percent left lower extremity permanent impairment] is awarded for [G]rade [3] pain in the left L5 nerve root according to [T]able 15-15, [page 424] combined with [T]able 15-18 on the same page of the [American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th edition)].
>
> "Therefore, at this time, there are no significant objective studies to support any additional [right lower extremity permanent partial impairment.] However, [three percent left lower extremity permanent impairment] is awarded as described above.

On July 24, 2006 the Office medical adviser noted that appellant reached maximum medical improvement on May 27, 1999.

By decision dated August 3, 2006, the Office issued a schedule award for a three percent loss of the left lower extremity. It also noted that appellant did not have greater than a 12 percent loss of use, of the right lower extremity, as previously award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[3]

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.[4] As neither the Act nor its regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole, no claimant is entitled to such a schedule award.[5] The Board notes that section 8109(19) specifically excludes the back from definition of organ.[6] However, a claimant may be entitled to a schedule award for permanent impairment to a schedule member or organ even though the cause of the impairment originated in the neck, shoulders or spine.[7]

ANALYSIS

Appellant had previously received a schedule award for a 12 percent impairment of his right lower extremity. As a result of the Office's decision of August 3, 2006, he received an additional award for a three percent impairment of the left lower extremity.

Appellant has not provided rationalized medical evidence showing that he is entitled to a greater award. Dr. Ladwig stated that appellant had a 25 percent permanent impairment secondary to his decompressive laminectomy and fusion and an additional 12 percent due to the disease that exists at the L3-4 level. However, he did not explain how he reached his impairment rating by applying the A.M.A., *Guides* or referring to specific tables and protocols.[8] The Board

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

[3] *See id.; Jacqueline Harris,* 54 ECAB 139 (2002).

[4] *See Joseph Lawrence, Jr.,* 53 ECAB 331 (2002).

[5] *Thomas J. Engelhart*, 50 ECAB 319 (1999).

[6] 5 U.S.C. § 8107; *see also Phyllis F. Cundiff,* 52 ECAB 439 (2001); *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

[7] 5 U.S.C. § 8109(c).

[8] *Jacqueline Harris, supra* note 3.

notes that appellant is not entitled to a schedule award for impairment to the back under the Act unless his back injury results in an impairment to a scheduled member such as the lower extremities.[9]

The only physician to properly apply the A.M.A., *Guides*, was the Office medical adviser. He found that appellant had a three percent impairment of his left lower extremity for Grade 3 pain in the left L5 nerve root under Table 15-15 page 424. He combined this rating with Table 15-18 which provides that the maximum percentage loss of function due to sensory deficit or pain of an unilateral spinal nerve root impairment such as an L5 nerve root impairment is five percent. Table 15-15 provides that Grade 3 impairment would result in a sensory deficit between 20 percent and 60 percent of the maximum impairment value. The Office medical adviser, therefore, correctly calculated that 60 percent of 5 percent results in a 3 percent impairment rating. He also noted that there was no medical evidence to support that appellant had greater award for his right lower extremity than the 12 percent previously awarded.[10]

CONCLUSION

The Board finds that appellant has not established that he has more than a 12 percent impairment of his right lower extremity and a 3 percent impairment of his left lower extremity for which he received a schedule award.

[9] *Thomas J. Englehart, supra* note 5.

[10] Appellant submitted additional evidence subsequent to the Office decision of August 3, 2006. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 3, 2006 is affirmed.

Issued: February 16, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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