

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD LIDDICOAT and DEPARTMENT OF THE AIR FORCE,
McCLELLAN AIR FORCE BASE, CA

*Docket No. 98-1176; Submitted on the Record;
Issued December 23, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant has a 20 percent permanent impairment of his right leg for which he received a schedule award.

On December 19, 1990 appellant, then a 42-year-old painter, filed a claim for a low back condition which was subsequently accepted by the Office for a herniated nucleus pulposus at L5-S1. The Office also accepted a February 23, 1996 injury for a lumbar sacral strain and authorized appropriate surgery. Appellant received appropriate wage-loss compensation for periods that he did not work.

On April 14, 1997 appellant filed a claim for a schedule award, Form CA-7. By letter dated August 5, 1997, the Office requested that Dr. Edward O. Gammel determine the extent of permanent partial impairment of the right lower extremity due to the February 23, 1996 employment injury. In his September 17, 1997 report, Dr. Gammel noted that appellant sustained injuries on September 6, 1990 and on February 23, 1996. He explained that the later injury was predominantly a soft tissue injury from which he recovered. Dr. Gammel opined that appellant suffered a permanent partial disability involving the right lower extremity and foot which was mild and constant. He further indicated that the impairment was related to disc rupture and acute progressive root compression syndrome caused by his work injury of September 1990. Dr. Gammel noted the injury involved the L5 and S1 nerve root. He listed a 15 percent impairment of the extensor hallucis longus of the right foot and a 15 percent impairment of the Achilles tendon of the right foot. Dr. Gammel reported hypalgesia to pinwheel testing on the right leg and foot and some right leg muscle weakness in the extensor hallucis longus and anterior tibialis. He stated that appellant's paresthesia would be forgotten initially but would progress to a throbbing pain upon standing for over two to three hours or after carrying moderate loads. Dr. Gammel graded appellant's muscle weakness as Grade 4, active movement against gravity with some resistance. He made some reference to the American

Medical Association, *Guides to the Evaluation of Permanent Impairment* but did not explain, per the A.M.A., *Guides*, how he derived his impairment calculation.

The Office then referred the case to Dr. Arthur S. Harris, a Board-certified orthopedic consultant, who, in a report dated January 13, 1998, reviewed the medical evidence, including Dr. Gammel's findings regarding the percentage of permanent impairment. For the purpose of a schedule award, Dr. Harris concluded that appellant's impairment could best be rated utilizing Unilateral Spinal Nerve Root Impairment Affecting Lower Extremity (Table 83/Page 130).¹ He determined that appellant had Grade 4 muscle strength (25 percent) (Table 12/Page 49) of his right L5 and S1 nerve root (37 percent) (Table 83/Page 130), resulting in a 9.25 percent impairment of the right lower extremity for muscle weakness. Appellant had Grade 4 muscle strength (25 percent) (Table 12/Page 49) of his right S1 nerve root (20 percent) (Table 83/Page 130) resulting in a 5 percent impairment. Utilizing combined values, this resulted in a 15 percent impairment of the right lower extremity for muscle weakness. Dr. Harris, in evaluating pain, assigned Grade 3 pain/decreased sensation which interferes with function (60 percent) (Table 11/Page 48) of his right L5 nerve root (5 percent) (Table 83/Page 130) resulting in 3 percent impairment of his right lower extremity and a 3 percent impairment of his right S1 nerve root (5 percent) (Table 83/Page 130). Utilizing the Combined Values Chart, Dr. Harris calculated that appellant had a six percent impairment for pain interfering with function. Utilizing combined values for 15 percent impairment for muscle weakness of the right lower extremity and 6 percent impairment for pain interfering with function of the right lower extremity, resulted in 20 percent impairment of the right lower extremity.

By decision dated January 26, 1998, the Office issued appellant a schedule award for 20 percent permanent loss of use of the right leg. The Office determined that appellant was entitled to 75 percent of his weekly pay and awarded him a schedule award for 57.6 weeks: the period from September 17, 1997 until October 25, 1998 at the rate of \$527.40 per week.

The Board finds that the Office properly determined that appellant was entitled to a schedule award for a 20 percent impairment of the right leg.

The schedule award provisions of the Federal Employees' Compensation Act² provide for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office as a standard for evaluation of schedule losses, and the Board has concurred in such adoption.³

¹ A.M.A., *Guides* (4th ed., 1993). All references in Dr. Harris' reports are to this edition of the A.M.A., *Guides*.

² 5 U.S.C. § 8107.

³ *George E. Williams*, 44 ECAB 530, 533 (1993).

On appeal, appellant does not dispute the Office's calculation of the schedule award for the loss of his right leg. A review of that determination reveals that it was properly done as Dr. Harris properly calculated appellant's schedule award based on findings by Dr. Gammel as Dr. Gammel did not provide detailed calculations of impairment in conformance with the A.M.A., *Guides*.⁴ Appellant, however, asserts that, based on Dr. Gammel's September 17, 1997 opinion, he should have been entitled to an additional award for the loss of his right foot. Where the residuals of an injury to a member of the body specified in the schedule award extend into an adjoining area of a member also enumerated in the schedule, the schedule award should be made on the basis of the percentage loss of use of the larger member.⁵ The compensation schedule enumerated in section 8107(c) of the Act provides for 288 weeks of compensation for total loss of a leg and only 205 weeks of compensation for total loss of a foot.⁶ While Dr. Gammel indicated that appellant suffered some loss to his right foot, his report also indicated that appellant's work injury affected the calf area and the leg. The Office properly determined that appellant should receive an award for the loss of his right leg, instead of his right foot since the right leg rating takes into account the impairment to appellant's foot. Consequently, the Office properly awarded appellant a schedule award for 20 percent permanent loss of his right leg.

⁴ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (where an attending physician's report does not indicate that an impairment estimate is based on the A.M.A., *Guides*, the Office may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*).

⁵ *Tonya D. Bell*, 43 ECAB 845, 849 (1992); *Ronald M. Klar*, 31 ECAB 136, 138 (1979); *Sam Jones*, 25 ECAB 163, 164 (1974).

⁶ 5 U.S.C. §§ 8107(c)(2), (4).

The decision of the Office Workers' Compensation Programs dated January 26, 1998 is hereby affirmed.

Dated, Washington, D.C.
December 23, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member