

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES F. MONAHAN and DEPARTMENT OF THE TREASURY,  
SECRET SERVICE, Boston, Mass.

*Docket No. 97-608; Submitted on the Record;  
Issued December 9, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant has more than an 11 percent impairment of the left lower extremity for which he received a schedule award.

The Board has reviewed the case record and finds that this case is not in posture for a decision.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained an aggravation of a partial tear of the Achilles tendon and authorized surgery which was performed on February 27, 1992. On November 8, 1995 appellant filed a claim for a schedule award.

In support of the request for a schedule award, appellant submitted a February 5, 1996 report from Dr. John Colley, an orthopedic surgeon. Dr. Colley reviewed appellant's medical history and conducted a physical examination. He opined that pursuant to Table 39, page 77, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed.), appellant had a grade 3 weakness in his left lower extremity, which resulted in a 25 percent permanent impairment. On February 8, 1996 Dr. Colley further indicated that appellant could dorsiflex his left ankle to 15 degrees and plantar flex to 20 degrees. He indicated that appellant could invert from neutral to 15 degrees and evert from neutral to 5 degrees. Dr. Colley stated that there was additional impairment of function due to weakness, atrophy, pain and anesthesia estimated at 25 percent. He again recommended an impairment rating of 25 percent for the left lower extremity.

On May 23, 1996 the Office medical adviser reviewed Dr. Colley's report and determined that appellant had an 11 percent permanent impairment of the left lower extremity. In this regard, the medical adviser noted that Dr. Colley's findings of 20 degrees plantar flexion and 15 degrees dorsiflexion indicated a 7 percent and a 0 percent impairment, respectively, of the left lower extremity pursuant to Table 42, page 78, of the A.M.A., *Guides*. In addition, the

medical adviser found that Dr. Colley's findings of 15 degrees inversion and 5 degrees eversion each demonstrated a 2 percent permanent impairment of the left lower extremity pursuant to Table 43, page 78, of the A.M.A., *Guides*. The medical adviser added these impairment findings together to find that appellant had an 11 percent permanent impairment of the left lower extremity. He did not consider Dr. Colley's findings, pursuant to Table 39, page 77, of the A.M.A., *Guides*, that appellant had a 25 percent impairment of the left lower extremity due to weakness in his ankle.

On September 14, 1996 the Office awarded appellant a schedule award based on an 11 percent permanent impairment of the left lower extremity.

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulations,<sup>2</sup> set forth that schedule awards are payable for permanent impairment of specified body members, functions, or organs. However, neither the Act nor the regulations specify the manner, in which the percentage of impairment is to be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment.<sup>3</sup>

In obtaining medical evidence for schedule award purposes, the Office must obtain an evaluation by an attending physician, which includes a detailed description of the impairment including, where applicable, the loss in degrees of motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment. The description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>4</sup> If the attending physician has provided a detailed description of the impairment, but has not properly evaluated the impairment pursuant to the A.M.A., *Guides*, the Office may request that the Office medical adviser review the case record and determine the degree of appellant's impairment utilizing the description provided by the attending physician and the A.M.A., *Guides*.<sup>5</sup>

In the instant case, both Dr. Colley and the Office medical adviser rendered impairment findings pursuant to the A.M.A., *Guides*. Dr. Colley, an orthopedic surgeon, opined that pursuant to Table 39, page 77, of the A.M.A., *Guides*, appellant had a 25 percent permanent partial impairment due to grade 3 weakness in his left ankle. The Office medical adviser, utilizing the range of motion findings provided by Dr. Colley, found that pursuant to Tables 42 and 43, page 77, of the A.M.A., *Guides*, appellant had an 11 percent permanent disability of the left lower extremity. When there are opposing medical reports of virtually equal weight and

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> *Leisa D. Vassar*, 40 ECAB 1287 (1989).

<sup>4</sup> *Joseph D. Lee*, 42 ECAB 172 (1990).

<sup>5</sup> *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act,<sup>6</sup> to resolve the conflict in the medical opinion.

As an unresolved conflict exists in the medical opinion evidence, this case must be remanded to the Office for referral to an impartial medical specialist. After such further development as necessary, the Office shall issue a *de novo* decision.<sup>7</sup>

The decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded to the Office for further development consistent with this opinion.

Dated, Washington, D.C.  
December 9, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>6</sup> 5 U.S.C. § 8123(a); *see Martha A. Whitson (Joe D. Whitson)*, 36 ECAB 370 (1984).

<sup>7</sup> Because appellant raises the issue of augmented benefits based on the dependency of a wife for the first time in this appeal, the Board lacks jurisdiction to consider this issue. 20 C.F.R. § 501.2(c).