

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL L. LOOKER and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, IL

*Docket No. 99-943; Submitted on the Record;
Issued August 1, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant has no more than an 11 percent permanent impairment of his right lower extremity for which he received a schedule award.

On January 31, 1997 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 25, 1997 he sustained an injury in the form of a broken right ankle. On the claim form, he asserted that he slipped on a patch of ice. On the reverse side of the claim form, appellant's supervisor noted that appellant first received medical care on January 25, 1997 from St. John's Hospital. Appellant stopped work on January 25, 1997.

In support of his claim, appellant submitted emergency department after care instructions and emergency department records from St. John's Hospital dated January 25, 1997. He also submitted prescription notes dated January 28 and February 4, 1997, progress notes dated January 28 to September 18, 1997, x-ray reports dated January 29 and February 6 and 18, 1997, duty status reports (Form CA-17) dated February 25 to June 3, 1997 and an attending physician's report (Form CA-20) dated February 11, 1998 from Dr. Tomasz W. Borowiecki, a Board-certified orthopedic surgeon. Additionally, appellant submitted a St. John's Hospital emergency room report from Dr. Robert Tarr.

On June 23 and September 15, 1998 appellant filed claims for compensation on account of traumatic injury in the form of a schedule award Form CA-7.

By two way memorandum dated February 4, 1997, the Office noted that Dr. Borowiecki scheduled surgery for appellant because he determined that appellant's fracture was not healing properly.

On February 10, 1997 the Office accepted appellant's traumatic injury claim for a right ankle fracture. The Office authorized right ankle surgery and necessary travel expenses incurred

by appellant in order to obtain authorized medical treatment. The Office requested additional medical evidence from appellant's attending physician.

By letter dated June 29, 1998, the Office asked Dr. Borowiecki to examine appellant in order to determine the extent of permanent partial impairment of his right ankle.

By letter dated July 21, 1998, Dr. Borowiecki informed the Office that he did not perform disability evaluations. He recommended that appellant arrange for an evaluation through the Midwest Occupational Health Associates.

In support of his claim for a schedule award, appellant submitted reports from Dr. Gregory E. Clem, a Board-certified family practitioner, dated July 21, 23 and 24, 1998. In his report dated July 21, 1998, Dr. Clem stated that Dr. Borowiecki surgically repaired appellant's right ankle fracture 10 days after the January 25, 1997 employment injury. He also stated that his examination of appellant revealed a well-healed scar over the lateral aspect of the ankle and chronic swelling without acute abnormalities. Dr. Clem further stated that appellant's range of motion was normal, dorsiflexion was 0 degrees, plantar flexion was 30 degrees and both eversion and inversion were 10 degrees. Additionally, he noted that the "unaffected side" inversion was 20 degrees, eversion 25 degrees, plantar flexion 40 degrees and dorsiflexion 15 degrees. Finally, Dr. Clem noted that appellant's x-ray showed a fixation plate over the distal aspect of the fibula, but no other abnormalities were observed. In completing an Office form report on July 23, 1998, he noted that appellant reached maximum medical improvement prior to the July 20, 1998 examination. Dr. Clem also noted that appellant could dorsi flex to 0 degrees and plantar flex 30 degrees. Further, he noted that appellant could invert from a neutral position to 10 degrees and evert from neutral to 10 degrees. Finally, Dr. Clem recommended a 15 percent impairment rating of the right lower extremity. In his report dated July 24, 1998, Dr. Clem stated: "[Appellant's] physical examination revealed some limitation in range of motion which would give him an impairment rating of 15 percent of the right lower extremity."

On August 24, 1998 the Office referred appellant's file to Dr. Carlo Bellabarba, an orthopedic surgeon acting as an Office medical consultant. In a report dated August 27, 1998, Dr. Bellabarba stated: "Dr. Clem's report from July 24, 1998 describes the resulting range of ankle motion as follows, with accompanying [permanent partial impairment] rating according to the parenthesized references in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (fourth edition)." Dr. Bellabarba found that appellant's ankle dorsiflexion was 0 degrees equaling a 7 percent impairment and ankle plantar flexion was 30 degrees equaling a 0 percent impairment. He also found that appellant's hindfoot inversion and eversion were each 10 degrees equaling a 2 percent impairment. Dr. Bellabarba noted that his conclusions on appellant's ankle impairment were based on table 42 and his conclusions on appellant's hindfoot were based on Table 43 in the A.M.A., *Guides*.¹ He concluded that appellant's total permanent impairment of the right lower extremity was 11 percent and that appellant reached maximum medical improvement within 6 months after surgery, August 5, 1997.

By decision dated October 1, 1998, the Office granted appellant a schedule award for an 11 percent permanent impairment of the right lower extremity in the amount of \$16,716.44. The

¹ A.M.A., *Guides* (4th ed. rev., 1994).

period of the award ran 31.68 weeks from August 5, 1997 to March 14, 1998. The Office awarded appellant 75 percent of his weekly pay rate for the period of the award.

On appeal, appellant asserts that he sustained a 15 percent impairment of the right lower extremity, and that the period of his schedule award was improperly calculated by the Office.

The Board finds that appellant had no more than an 11 percent permanent impairment of his right lower extremity for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set 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 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 Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the injury.⁵ Thus, an employee is not eligible to receive a schedule award until he has reached maximum medical improvement. Maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.⁶ The question of when maximum medical improvement has been reached is a factual one depending upon the medical findings in the record.⁷

In this case, the Office properly determined that appellant has an 11 percent permanent impairment of his right lower extremity and that the schedule award covers 31.68 weeks from August 5, 1997 to March 14, 1998. In his July 21 and 23, 1998 reports, Dr. Clem stated that appellant's right ankle dorsiflexion was 0 degrees and plantar flexion was 30 degrees, and that appellant's eversion and inversion were both 10 degrees. He recommended a 15 percent total permanent impairment rating in his report dated July 23, 1998. However, Dr. Clem did not fully utilize the A.M.A., *Guides* when assessing appellant's impairment of the right lower extremity at 15 percent. In that regard, he did not properly combine the percentages of impairment of appellant's dorsiflexion, plantar flexion, eversion and inversion. Thus, the Office properly referred the case record to Dr. Bellabarba, its medical consultant, for his opinion.⁸

² 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.304.

⁴ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

⁵ *Eugenia L. Smith*, 41 ECAB 409, 413 (1990); *Yolanda Librera*, 37 ECAB 388 (1986).

⁶ *Joseph R. Waples*, 44 ECAB 936, 940 (1993); *Marie J. Born*, 27 ECAB 623, 629 (1976).

⁷ *Joseph R. Waples*, supra note 6 at 940; *Marie J. Born*, supra note 6 at 630.

⁸ *Louis Chapa, Jr.*, 41 ECAB 159 (1989).

In his report dated August 27, 1998, Dr. Bellabarba relied upon Dr. Clem's clinical findings, but he recommended an 11 percent permanent impairment rating for appellant's right lower extremity by combining appellant's 7 percent ankle impairment with his 4 percent hindfoot impairment. His total permanent impairment rating recommendation conforms to the A.M.A., *Guides* Combined Values Chart.⁹ Under the Act, an 11 percent permanent impairment rating of the lower extremity results in a schedule award of 31.68 weeks.¹⁰ By multiplying appellant's 11 percent permanent impairment rating by 288, the maximum number of weeks for which a schedule award may be paid for loss of use of the leg, the Office properly determined that appellant was entitled to a schedule award for 31.68 weeks. Thus, the Office properly followed the advice of its medical consultant in granting appellant's schedule award since the consultant properly utilized the A.M.A., *Guides* and determined that he had an 11 percent impairment of the right lower extremity. Appellant is entitled to no more under the Act. There is no discretion on the part of the Office or Board to grant additional compensation for such losses.¹¹

The decision of the Office of Workers' Compensation Programs dated October 1, 1998 is affirmed.

Dated, Washington, D.C.
August 1, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁹ A.M.A., *Guides* 322-23.

¹⁰ 5 U.S.C. § 8107(c)(2).

¹¹ *Donald Mueller*, 32 ECAB 33 (1980).