

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL R. SIDDER s and U.S. POSTAL SERVICE,
POST OFFICE, Bellefontaine, OH

*Docket No. 99-1547; Submitted on the Record;
Issued June 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he has greater than a 14 percent permanent impairment for loss of use of the left lower extremity, for which he received a schedule award.

On November 5, 1990 appellant, a 36-year-old letter carrier, injured his left ankle when he was startled by a snarling dog while stepping off a front porch. Appellant filed a claim for benefits, which the Office of Workers' Compensation Programs accepted for contusion and sprain of the left ankle and fracture of the left talus and navicular bone. Appellant filed claims for recurrence of disability on February 14 and September 6, 1991, which were accepted by the Office. Appellant returned to light-duty work on May 6, 1991 and returned to full duty on July 27, 1991. Appellant missed work for intermittent periods due to his accepted left foot injury, for which the Office paid him appropriate compensation.

On April 20, 1992 the Office granted appellant an award under the schedule based on a five percent permanent impairment for loss of use of the left foot. The Office granted appellant a schedule award for a total of 10 percent permanent impairment for loss of use of the left leg on August 24, 1993.¹

On April 5, 1994 appellant filed a Form CA-7 claim for an additional award for loss of use of the left leg.

By decision dated December 20, 1994, the Office denied the claim for an additional award for loss of use of the left lower extremity under the schedule.

Appellant returned to restricted duty for four hours per day on October 16, 1995 and for eight hours per day on November 27, 1995.

¹ The Office indicated that it had erred in its April 20, 1992 decision, finding that appellant had actually been entitled to a schedule award for loss of use of the left leg rather than the foot.

On July 28, 1995 appellant had surgery on his left foot performed by Dr. Stanton L. Gurevitz, a podiatrist, which was approved by the Office.

Appellant filed a claim for recurrence of disability on August 29, 1996, which was accepted by the Office. In a report dated August 27, 1996, Dr. Gurevitz stated that appellant had an episode, in which two of the bone staples implanted into his foot during his 1995 foot surgery had fractured. He noted the possibility that the staples needed to be surgically removed and that additional surgery was required to effect complete fusion of the joints.

In a report dated September 11, 1996, Dr. Gurevitz stated that radiographs taken on August 19, 1996 confirmed that appellant had two buried bone staples, which were fractured and needed to be surgically removed. The Office authorized this surgery, which he performed on February 28, 1997.

On July 23, 1998 appellant filed a Form CA-7 claim for an additional award for loss of use of the left leg. In support of his request, appellant submitted an August 12, 1998 report from Dr. Gurevitz, who examined appellant for an additional impairment evaluation based on atrophy in his lower leg, causally related to the November 5, 1990 employment injury. He stated:

“Measurement ... taken just above the ankle bone is 9.5 inches bilaterally. Just below the muscle belly of the gastroc is 13.5 inches on the left and 13.75 on the right. Just below the knee at the top of the gastroc muscle is 14.5 inches on the left and 15.25 inches on the right.

“Range of motion on dorsiflexion is 12 degrees on the right and 15 degrees on the left. Plantar flexion is 30 degrees on the left and 42 degrees on the right. Inversion and eversion is [zero] degrees on the left, which is secondary to fusion of the talo-navicular joint. He has 24 degrees of inversion on the right and [eight] degrees of eversion on the right. His deep tendon reflexes are intact bilaterally. He does have a positive [T]inel[’s] sign on the left. Muscle strength of his lower leg muscles are [five] of [five] on the right and [four] of [five] on the left. [Appellant] has the inability to go up on his tip-toes on the left. He is able to go up on his tip-toes on the right. His gait is antalgic without his orthotics. His gait is normal with his orthotics.

“[Appellant] describes [his] left foot and leg as being tired by the end of the day. He has intermittent discomfort and has pain behind the medial malleolus and at the insertion of the posterior tibial tendon into the navicular most of the time. He does have a problem with balance on his left foot if he does not have the orthotic in his shoe. He also states he wears his orthotics constantly because of his loss of balance and has increased pain without his orthotics. I feel [appellant] has [reached] his maximum medical improvement through his left foot at this time.”

In a memorandum and Office work sheet dated January 8, 1999, the Office medical adviser found that appellant had a 14 percent permanent impairment based on loss of use of his left lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition) (the A.M.A., *Guides*). Relying on Dr. Gurevitz’s

findings and conclusions, the Office medical adviser calculated that appellant had 0 percent impairment based on loss of range of motion based on flexion in his left ankle, noting that appellant had 30 degrees plantar flexion and 15 degrees dorsiflexion pursuant to Table 42 at page 78 of the A.M.A., *Guides*; 7 percent impairment based on a 5 percent loss of inversion and 2 percent loss of eversion, pursuant to Table 43 at page 78 of the A.M.A., *Guides*; and an additional 7 percent impairment due to atrophy/muscle weakness of 0.75 degrees, pursuant to Table 37 at page 77 of the A.M.A., *Guides*. The Office medical adviser used the Combined Values Chart to arrive at a total 14 percent impairment of the left lower extremity.

On December 27, 1999 the Office granted appellant a schedule award for an additional 4 percent totaling a 14 percent permanent impairment of the left lower extremity for the period from August 12 to October 31, 1998, for a total of 11.52 weeks of compensation.

The Board finds that appellant has no more than a 14 percent permanent impairment for loss of use of the left 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 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.⁴ However, neither the Act nor its regulations specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* (fourth edition) have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.⁵

In the instant case, the Office determined that appellant had a 14 percent permanent impairment of his left lower extremity by adopting the findings of the Office medical adviser, who determined the precise impairment rating by taking Dr. Gurvitz's calculations based on loss of inversion and eversion at Table 43, page 78, of the A.M.A., *Guides* and combining these losses with an additional impairment based on atrophy/loss of strength pursuant to Table 37 at page 77 of the A.M.A., *Guides*.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a 14 percent permanent impairment for loss of use of his left lower extremity, for which he has received a schedule award from the Office and that appellant has failed to provide probative, supportable medical evidence that he has greater than the 14 percent impairment already awarded.

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

³ 20 C.F.R. § 10.304.

⁴ 5 U.S.C. § 8107(c)(19).

⁵ *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

The January 15, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 8, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member