

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL FOX and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 00-953; Submitted on the Record;
Issued March 22, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a 20 percent permanent impairment to his left leg.

The Office of Workers' Compensation Programs has accepted that appellant sustained a fractured left ankle in the performance of duty on January 14, 1994. By decision dated December 3, 1998, the Office issued a schedule award for a 20 percent permanent impairment of the left leg. The period of the award was 57.60 weeks, from July 31, 1998 to September 7, 1999. In a decision dated September 16, 1999, an Office hearing representative affirmed the schedule award decision.

The Board finds that appellant has not established more than a 20 percent permanent impairment.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.²

In this case, appellant submitted a July 31, 1998 report from Dr. Nicholas Diamond, an osteopath, providing results on examination and an opinion that appellant had a 44 percent

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

² A. George Lampo, 45 ECAB 441 (1994).

permanent impairment to the leg. Dr. Diamond asserted that appellant had a 30 percent impairment based on arthritis as provided in Table 62 of the A.M.A., *Guides*,³ with an additional 20 percent for intra-articular ankle fracture with displacement.

As noted by an Office medical adviser in an October 14, 1998 report, Table 62 provides impairments for arthritis based on roentgenographically determined cartilage intervals for various joints, including the ankle. A 30 percent impairment would require a 0 millimeter cartilage interval, but Dr. Diamond does not discuss cartilage interval, or indicate what recent diagnostic tests were used to establish cartilage interval in the ankle. In a letter dated October 27, 1998, the Office advised appellant that he could submit further medical evidence regarding the arthritis impairment. There is no indication that any additional probative medical evidence was received. The Board finds that the medical evidence is not sufficient to establish an impairment based on Table 62.

Both Dr. Diamond and the medical adviser concurred that the application of Table 64 resulted in a 20 percent leg impairment, based on the intra-articular fracture.⁴ This represents the weight of the evidence in this case. Appellant therefore was entitled to 20 percent of the maximum 288 weeks of compensation (57.60),⁵ commencing on the date of maximum medical improvement.⁶

The decision of the Office of Workers' Compensation Programs dated September 16, 1999 is affirmed.

Dated, Washington, DC
March 22, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

³ A.M.A., *Guides*, (4th ed. 1993) 83, Table 62.

⁴ *Id.*, 86, Table 64. An intra-articular fracture with displacement is assigned a 20 percent leg impairment.

⁵ *See* 5 U.S.C. § 8107.

⁶ *Albert Valverde*, 36 ECAB 233, 237 (1984).