

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CELESTE WARNER-CACKETT and U.S. POSTAL SERVICE,  
POST OFFICE, Plainview, NY

*Docket No. 02-2375; Submitted on the Record;  
Issued November 18, 2003*

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DECISION and ORDER

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

The issue is whether appellant has established that she has greater than a six percent permanent impairment of the left lower extremity for which she received a schedule award.

On November 10, 1994 appellant, a 44-year-old mail handler, injured her back and left knee when she slipped on an icy sidewalk and fell to the ground. She filed a claim for benefits on November 10, 1994, which the Office of Workers' Compensation Programs accepted for internal derangement of the left knee, low back syndrome and cervical sprain. The Office paid appropriate compensation for total disability. Appellant returned to work on light duty on August 26, 1998, but quit after working only two and one-half days. She subsequently filed a claim for recurrence of her work-related disability.

By decision dated August 9, 1999, the Office rejected appellants' claim for a recurrence of disability.

By letter dated August 16, 1999, appellant's attorney requested a schedule award.

In a report and impairment evaluation dated March 25, 2000, Dr. David O. Weiss, an osteopath, found that appellant had an eight percent impairment for loss of use of the left lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition). Dr. Weiss found that appellant's gastroc calf circumference measured 37½ centimeters on the left, as opposed to 38½ on the right; this translated to an 8 percent impairment pursuant to Table 37 at page 77 of the fourth edition of the A.M.A., *Guides*. He further found that the left quadriceps measured 46 centimeters on the left, as opposed to 46½ centimeters on the right.

In a memorandum dated March 20, 2001, an Office medical adviser reviewed Dr. Weiss' findings and conclusions and determined that appellant had a six percent permanent impairment for loss of use of the left lower extremity. The Office medical adviser relied on Dr. Weiss' measurements and findings on examination, which were done in accordance with the fourth

edition of the A.M.A., *Guides*, but rendered his own findings and conclusions in accordance with the fifth edition of the A.M.A., *Guides*. The Office medical adviser calculated the impairment in appellant's left lower extremity by taking Dr. Weiss' finding of a one and one-half differential in appellant's left calf gastroc and translating it into a five and one-half permanent impairment based on calf atrophy, pursuant to Table 17.6 of the fifth edition of the A.M.A., *Guides*. He found that the one-half centimeter difference in quadriceps yielded no impairment pursuant to the A.M.A., *Guides*. Using the Combined Values Chart at pages 604-06, the Office medical adviser found that these findings yielded a six percent impairment of the left lower extremity.

On April 3, 2001 the Office granted appellant a schedule award for a six percent permanent impairment of the left lower extremity for the period March 22 to July 20, 2000, for a total of 17.28 weeks of compensation.

By letter dated April 10, 2001, appellant's attorney requested an oral hearing, which was held on September 26, 2001.

By decision dated November 13, 2001, an Office hearing representative affirmed the April 3, 2001 Office decision.<sup>1</sup>

The Board finds that appellant has no more than a six percent permanent impairment of her left lower extremity, for which she has received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act<sup>2</sup> 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.<sup>3</sup> However, the Act does not 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 Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.<sup>4</sup>

In this case, the Office medical adviser determined that appellant had a six percent permanent impairment of her left lower extremity. He took Dr. Weiss' measurements and findings pertaining to the left calf and calculated a five and one-half percent left calf impairment due to atrophy, based on the one and one-half centimeter<sup>5</sup> difference in circumference. The notes which explain how atrophy is evaluated in Table 17.6 of the A.M.A., *Guides*, indicate that,

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<sup>1</sup> The hearing representative indicated in a footnote that the district Office should further develop medical evidence regarding appellant's claim that the November 10, 1994 work injury also resulted in permanent impairment of her right lower extremity and both upper extremities.

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

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> The hearing representative noted that the difference between the 47 centimeters on the right calf and 46 centimeters on the left, as measured by Dr. Weiss, was actually only 1 inch.

in measuring impairments based on atrophy, the leg circumference should be measured and compared to the opposite leg at equal distance. Dr. Weiss' finding of one and one-half centimeter difference in calf circumference comes within the one and one-ninth centimeter rating in Table 17.6, which translates to a three to eight percent impairment of the left lower extremity.<sup>6</sup> The Office medical adviser then applied these findings to the Combined Values Chart at pages 604-06, to arrive at the total of a six percent impairment in appellant's left lower extremity.

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

The decision of the Office of Workers' Compensation Programs dated November 13, 2001 is affirmed.

Dated, Washington, DC  
November 18, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> The Board notes that the rating from the Office medical adviser is the only medical report in the record which relies on the updated fifth edition of the A.M.A., *Guides*.