United States Department of Labor
Employees' Compensation Appeals Board

CARDELL WATKINS, Appellant	)	
and	)	**Docket No. 04-205**
	)	**Issued: February 23, 2004**
U.S. POSTAL SERVICE, NORTH UNIVERSITY POST OFFICE, Peoria, IL, Employer	)	

Appearances:
Cardell Watkins, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 30, 2003 appellant filed a timely appeal from the August 1, 2003 decision of the Office of Workers' Compensation Programs granting him schedule awards for a 12 percent permanent impairment of both the right and left lower extremities. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

ISSUE

The issue is whether appellant is entitled to more than a 12 percent permanent impairment of both the right and left lower extremities, for which he received schedule awards.

FACTUAL HISTORY

On June 26, 2000 appellant, then a 46-year-old letter carrier, filed an occupational disease claim alleging that on December 14, 1999 he first became aware of the pain in his feet and ankles. Appellant stated that he had a pneumatic walker on his right foot. He further stated that on June 12, 2000 he first realized that his conditions were caused by factors of his federal employment. Appellant stated that he believed that walking 10 to 13 miles a day caused the pain

in his feet and ankles. He stopped work on June 17, 2000. He returned to work within certain physical restrictions on July 7, 2000.

In a September 8, 2000 letter, the Office accepted appellant's claim for bilateral plantar fasciitis and right Achilles tendinitis.

On August 3, 2001 appellant filed a claim for a schedule award. In support of his claim, appellant submitted a July 24, 2001 attending physician's report from Dr. Donald J. Sheller, a Board-certified podiatrist and treating physician. He indicated that appellant's severe plantar fasciitis and torn peroneal brevis tendon were caused by the December 14, 1999 accepted employment injury. Appellant submitted Dr. Sheller's May 8, 2001 note indicating his permanent restrictions. Appellant also submitted May 31, 2000 reports of Dr. George A. Gentry, a Board-certified radiologist, regarding his findings on magnetic resonance imaging (MRI) of appellant's right and left ankles.

By letter dated August 9, 2001, the Office requested that Dr. Sheller provide an assessment of appellant's permanent impairment utilizing the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. In a response letter dated August 14, 2001, Dr. Sheller stated that appellant had reached maximum medical improvement. He provided appellant's physical restrictions and his objective findings. Dr. Sheller opined that appellant was eligible to perform his job with the recommended restrictions noting that he was working at 75 percent to 80 percent capacity.

On January 3, 2002 the Office received a copy of Dr. Sheller's medical treatment notes covering the period February 14 through June 20, 2001 and his December 20, 2001 note indicating that appellant could return to work with permanent restrictions. Dr. Sheller submitted a January 29, 2002 report reiterating that appellant had reached maximum improvement and he was able to work at 75 percent to 80 percent capacity. He opined that appellant had a 20 percent to 25 percent loss of use of each foot.

The Office found that Dr. Sheller's impairment rating was not sufficient to grant appellant a schedule award and again requested, in a March 13, 2002 letter, that Dr. Sheller provide the extent of appellant's permanent impairment based on the application of the fifth edition of the A.M.A., *Guides*.

Dr. Sheller submitted an April 29, 2002 report stating that appellant had maximum improvement of 80 percent in each foot and ankle which was reached on August 14, 2001. He diagnosed several conditions and indicated that appellant would have a problem walking on uneven terrain even with bracing. Dr. Sheller indicated that appellant had a 20 percent permanent impairment of each lower extremity. Subsequently, the Office received a March 21, 2002 report from Dr. Sheller expressing appellant's need for surgery if functional orthotics were not fabricated.

On August 3, 2002 an Office medical adviser reviewed appellant's medical records and determined that he had a 12 percent permanent impairment of both the right and left lower extremities based on the tables in the A.M.A., *Guides*.

By decision dated August 1, 2003, the Office granted appellant schedule awards for a 12 percent permanent impairment of both the right and left lower extremities.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] 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 of loss of use.[3] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure 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* have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[4]

ANALYSIS

Dr. Sheller, appellant's treating physician, stated that on August 14, 2001 appellant had maximum improvement of 80 percent in each foot and ankle. He provided a diagnosis of chronic lateral ankle instability as a result of the peroneal tendon tears, bilateral sinus tarsi syndrome, chronic Type 2 peroneal brevis tendon tears, bilateral Achilles tendinitis and bilateral plantar fasciitis. He stated that appellant would have a great problem walking on uneven terrain even with bracing. He further stated that appellant had an abnormally increased amount of inversion present at his subtalar joints bilaterally due to the lack of peroneal stabilization. The sinus tarsi syndrome which was evident on the MRI was a chronic problem exacerbated by the chronic instability. Dr. Sheller opined that appellant could function on even surfaces with external ankle bracing with tolerable chronic pain. He concluded that appellant experienced severe pain if walking on uneven surfaces in his subtalar joint and lateral ankle bilaterally. On the Office's March 13, 2002 letter, Dr. Sheller indicated that appellant had a 20 percent permanent impairment of each lower extremity.

The Office medical adviser reviewed appellant's medical records including, Dr. Sheller's findings and determined that, based on the fifth edition of the A.M.A., *Guides*:

> "[Appellant] receives 80 percent sensory deficit for pain in the distribution of the common peroneal and sural nerves (Grade 2, Table 16-10, p. 482). He also receives 50 percent impairment for pain in the distribution of the medial and

[1] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[2] 20 C.F.R. § 10.404.

[3] 5 U.S.C. § 8107(c)(19).

[4] *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

lateral plantar nerves (Grade 3, Table 16-10, p. 482).[5] The maximum lower extremity impairment due to sensory deficit in the distribution of the common peroneal and sural nerves is five percent and two percent, respectively. Maximum lower extremity impairment for the medial and lateral plantar nerves is five percent each. Therefore, [appellant] receives four percent lower extremity impairment for the common peroneal nerve, two percent for the sural, and three percent for each of the plantar nerves. Using the Combined Values Chart (p. 604), he receives 12 percent lower extremity permanent partial impairment for chronic pain."

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no additional impairment of his right and left lower extremities. Further, in finding that appellant had a 20 percent impairment of the right and left lower extremities, Dr. Sheller failed to indicate that his impairment ratings were based on tables and figures in the A.M.A., *Guides*.

CONCLUSION

Appellant has failed to provide probative, supportable medical evidence that he has greater than a 12 percent permanent impairment of both the right and left lower extremities.

[5] The Board notes that the Office medical adviser used Table 16-10 of the A.M.A., *Guides*, in determining appellant's impairment due to sensory deficits as mandated by Chapter 17.21 of the A.M.A., *Guides*. *See* A.M.A., *Guides*, (5th ed. 2001) at 550; *Joseph Lawrence, Jr.*, 53 ECAB ___ (Docket No. 01-1361, issued February 4, 2002).

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member