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| <b>MARILYN J. HAYNES, Appellant</b>      | ) |                              |
|                                          | ) | <b>Docket No. 04-62</b>      |
| <b>and</b>                               | ) | <b>Issued: June 10, 2004</b> |
|                                          | ) |                              |
| <b>U.S. POSTAL SERVICE, POST OFFICE,</b> | ) |                              |
| <b>Miami, FL, Employer</b>               | ) |                              |
|                                          | ) |                              |

*Case Submitted on the Record*

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

On October 9, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 8, 2003, which granted a schedule award for four percent impairment of the left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award in this case.

The issue is whether appellant has more than a four percent impairment of the left lower extremity, for which she has received a schedule award.

On March 14, 2000 appellant, then a 43-year-old letter carrier, filed a claim alleging that she developed a left ankle and foot condition while performing her duties as a letter carrier. The Office accepted that appellant developed left ankle tendinitis and a tear of the posterior tibial tendon of the left ankle and authorized surgery, which was performed on November 7, 2000. She returned to work as a modified letter carrier on September 25, 2000 and stopped on

November 7, 2000. Appellant returned to a full-time modified letter carrier position on May 23, 2003. Her salary on the date of injury was \$33,351.24 per year.

Appellant submitted medical reports from Dr. Steven A. Bernstein, a podiatrist, dated October 1999 to March 2002.<sup>1</sup> In an operative report dated November 7, 2000, the physician performed a subtalar joint arthrodisis with neutral positioning, bone grafting and screw fixation. He diagnosed a ruptured posterior tibial tendon of the left foot, subtalar joint arthrosis, significant arthrosis and degeneration of the subtalar joint with collapse. On July 2, 2002 Dr. Bernstein removed the external fixator and hardware for the left foot.

The Office referred appellant to Dr. George J. Kolettis, a Board-certified orthopedic surgeon, for a second opinion. In a report dated April 10, 2002, he diagnosed left foot pain, status post multiple operations and residual pain and swelling from scar tissue related to the surgery with cutaneous nerve involvement. Dr. Kolettis did not believe that appellant's left ankle condition was an aggravation of a concurrent condition. He advised that she was not totally disabled from work, but could return to a sedentary type position.

Appellant submitted additional medical records from Dr. Seth Wachsman, a Board-certified anesthesiologist, who reviewed a history of her left foot condition and diagnosed left ankle and foot pain, with possible neuroma formation. He recommended injections into the sural, superficial and deep peroneal nerves of the left foot. In a report dated July 17, 2002, Dr. Wachsman advised that appellant experienced some relief with the sural nerve block injections. He diagnosed possible left sural nerve neuritis and somatic pain with pinning in the left foot.

In an operative report dated July 2, 2002, Dr. Bernstein removed the deep symptomatic hardware and excision of the entrapped nerve of the left foot. He indicated that appellant was progressing slowly post-surgery and still experienced pain in the left foot. In a report dated November 20, 2002, the physician noted that appellant had reached maximum medical improvement with respect to her left foot and advised that her pain was due to the scar tissue. Dr. Bernstein advised that she had an 18 percent impairment of the left foot and ankle as a result of the work-related injury. He noted that appellant could return to work in a sedentary light-duty position with supportive shoe gear, orthotics and bracing.<sup>2</sup>

Appellant submitted a report from Dr. Wachsman dated May 13, 2003, which advised that she continued to have pain and numbness in the left sural nerve distribution and pain rated 8 out of 10. He diagnosed left neuropathic sural nerve neuritis, possible neuroma and overuse of

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<sup>1</sup> On September 8, 2000 the employing establishment offered appellant a full-time modified letter carrier position, which she accepted and began working on September 25, 2000.

<sup>2</sup> On January 24, 2003 the employing establishment offered appellant a position as a modified letter carrier from 7:00 a.m. to 12:00 p.m., with a salary of \$41,436.00. She accepted the position and began working on January 30, 2003. On May 22, 2003 the employing establishment offered appellant a position as a full-time modified letter carrier position with a salary of \$41,436.00. She accepted the position and began working on May 23, 2003. By decision dated August 8, 2003, the Office found the full-time modified letter carrier fairly and reasonably represented appellant's wage-earning capacity. The Board notes that she did not appeal the Office's wage-earning capacity determination.

the right foot and recommended a sural nerve block. The physician noted range of motion was decreased with inversion, eversion, plantar flexion and dorsiflexion of no more than 25 percent in either direction.

On June 18, 2003 appellant filed a Form CA-7 claim for a schedule award.

Appellant's medical records were referred to an Office medical adviser. In an August 13, 2003 report, he found that she sustained a four percent impairment of the left lower extremity and that the date of maximum medical improvement was May 13, 2003. Under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>3</sup> the medical adviser noted that 15 degrees for retention of dorsiflexion represents 0 percent impairment;<sup>4</sup> 30 degrees retention of plantar flexion represent 0 percent impairment;<sup>5</sup> 15 degrees retention of eversion represents 0 percent impairment;<sup>6</sup> 20 degrees retention of inversion represents 2 percent impairment;<sup>7</sup> and 2 percent impairment for pain of the sural nerve<sup>8</sup> which, pursuant to the Combined Values Chart, equaled 4 percent impairment of the left lower extremity.

By decision dated September 8, 2003, the Office granted appellant a schedule award for a four percent impairment of the left lower extremity for the period August 10 to October 29, 2003.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>9</sup> and its implementing regulation<sup>10</sup> set forth the number of weeks of compensation payable to employees sustaining impairment from loss or loss of use, of scheduled 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 implementing regulation as the appropriate standard for evaluating schedule losses.

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from her physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a detailed description

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<sup>3</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>4</sup> See page 537, Table 17-11 of the A.M.A., *Guides*.

<sup>5</sup> *Id.*

<sup>6</sup> See page 537, Table 17-12 of the A.M.A., *Guides*.

<sup>7</sup> *Id.*

<sup>8</sup> See page 552, Table 17-37 of the A.M.A., *Guides*.

<sup>9</sup> 5 U.S.C. § 8107.

<sup>10</sup> 20 C.F.R. § 10.404 (1999).

of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance in sensation or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>11</sup>

### ANALYSIS

In the present case, an Office medical adviser relied upon the May 13, 2003 report of Dr. Wachsman to determine that appellant had a four percent impairment of the left lower extremity. However, although the A.M.A., *Guides* were prepared to allow one physician to use the raw clinical information of another physician in order to arrive at a uniform, standardized evaluation.<sup>12</sup> Dr. Wachsman did not provide sufficient clinical information in his reports to allow standardized evaluation in the present case.

When evaluating the left lower extremity for impairment, the examining physician is to provide, among other things, range of motion measurements including retained active flexion and extension measurements.<sup>13</sup> Dr. Wachsman merely noted that range of motion with inversion, eversion, plantar flexion and dorsiflexion was decreased no more than 25 percent in either direction. He did not cite to any tables or charts in support of his impairment rating determination or correlate his findings to the A.M.A. *Guides*.

The Office medical adviser's report of August 13, 2003 noted a four percent impairment for the left lower extremity. However, the medical adviser did not adequately explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.<sup>14</sup> For example, the Office medical adviser indicated that appellant sustained a four percent impairment of the left lower extremity and indicated in his report that he relied upon the range of motion figures provided by Dr. Wachsman in his report of May 13, 2003, in finding a two percent impairment under Tables 17-11 and 17-12. The Office medical adviser in his August 13, 2003 report, does not explain how he extrapolated Dr. Wachman's data to arrive at his impairment recommendations. For example, the Office medical adviser failed to explain the basis for extrapolating the specific range of motion figures of 15 degrees for retention of dorsiflexion, 30 degrees for retention of plantar flexion, 15 degrees for retention of eversion and 20 degrees for retention of inversion as Dr. Wachsman's did not set forth these specific range of

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<sup>11</sup> *Id.*, see also *John H. Smith*, 41 ECAB 444, 448 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(2) (October 1990). (The procedure manual provides in pertinent part: "Description of Impairment. The attending physician should describe the impairment in sufficient detail to permit clear visualization of the impairment and the restrictions and limitations which have resulted. The description should include the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent description of the impairment.")

<sup>12</sup> See *Michael C. Norman*, 42 ECAB 768 (1991).

<sup>13</sup> *Supra* note 3.

<sup>14</sup> See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

motion figures. Rather, as noted above, he merely indicated range of motion was decreased with inversion, eversion, plantar flexion and dorsiflexion of no more than 25 percent in either direction. The Board notes that the Office medical adviser determined that appellant sustained a two percent rating for pain of the sural nerve based upon the findings of Dr. Bernstein of left neuropathic sural nerve neuritis.<sup>15</sup>

Dr. Bernstein's report of November 20, 2002, which determined appellant's lower extremity impairment as 18 percent, failed to explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.<sup>16</sup> He merely advised that appellant had an 18 percent impairment of the left foot and ankle as a result of the work-related injury. Dr. Bernstein failed to refer to specific tables or charts in the A.M.A., *Guides* or to provide his calculations in support of this determination.

In view of the disparity in the evaluations of the Office medical adviser, Dr. Wachsman and Dr. Bernstein and the failure of the Office medical adviser to adequately explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*, the claim requires further development to determine the extent of impairment of appellant's left lower extremity.<sup>17</sup>

On remand the Office should further develop the medical evidence of record and obtain an opinion as to whether appellant has any impairment of the left lower extremity causally related to her March 14, 2000 employment injury. The Office should request the examining physician to conduct appropriate examination of the extremities, including range of motion and review the diagnostic tests. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's schedule award claim.

### **CONCLUSION**

The Board finds that this case is not in posture for a decision regarding appellant's entitlement to a schedule award.

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<sup>15</sup> See page 552, Table 17-37 of the A.M.A., *Guides*.

<sup>16</sup> See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

<sup>17</sup> See Federal (FECA) Procedure Manual, Part 2 -- Schedule Awards and Permanent Disability Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (March 1995) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 8, 2003 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further development in accordance with this decision of the Board.

Issued: June 10, 2004  
Washington, DC

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member