

**United States Department of Labor
Employees' Compensation Appeals Board**

ANGELA M. THOMPSON, Appellant

and

**U.S. POSTAL SERVICE, NORTH STATION
POST OFFICE, Jackson, MS, Employer**

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**Docket No. 04-180
Issued: March 11, 2004**

Appearances:
Angela M. Thompson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 24, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated July 18, 2003 denying her claim for a schedule award. Pursuant to 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 a schedule award for permanent impairment of her right foot.

FACTUAL HISTORY

On December 21, 2000 appellant, then a 28-year-old letter carrier, filed an occupational disease claim alleging that she sustained an injury to her right foot due to the walking required in her job. She first became aware of her condition on December 14, 2000. The Office accepted

her claim for right foot tendinitis.¹ On May 17, 2002 the Office accepted an aggravation of a Morton's neuroma of the right foot.²

On May 13, 2002 appellant filed a claim for a schedule award.

In a May 30, 2002 memorandum, the Office medical director indicated that there was no medical evidence establishing that appellant had any permanent impairment due to her accepted right foot tendinitis or aggravation of a Morton's neuroma because this condition was not considered an occupational condition.

By letter dated May 31, 2002, the Office advised appellant that she needed to submit within 30 days a medical report from her attending physician providing an estimate of permanent impairment of the right foot based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

By decision dated July 18, 2003, the Office denied appellant's claim for a schedule award on the grounds that there was no medical evidence of record establishing that she had any permanent impairment of the right foot based on the fifth edition of the A.M.A., *Guides*.

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.⁴ Section 8107 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.⁵ The schedule award provision of the Act⁶ and its implementing federal regulation⁷ set forth the number of weeks of compensation payable to employees sustaining permanent 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

¹ In a December 20, 2000 report, Dr. H. Marcellus diagnosed right foot tendinitis.

² In a March 13, 2002 report, Dr. Marcellus diagnosed an aggravation of a Morton's neuroma of the right foot. "Morton's toe" is defined as "a form of metatarsalgia due to compression of a branch of the plantar nerve by the metatarsal heads; chronic compression may lead to formation of a neuroma." *DORLAND'S ILLUSTRATED Medical Dictionary*, 1727 (27th ed. 1988).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Edward W. Spohr*, 54 ECAB ____ (Docket No. 03-1173, issued September 10, 2003); *Nathaniel Milton*, 37 ECAB 712 (1986).

⁵ 5 U.S.C. § 8107(a).

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (5th ed. 2001) as the uniform standard applicable to all claimants.⁸

ANALYSIS

The record contains a number of medical reports concerning appellant's accepted right foot conditions, right foot tendinitis and aggravation of a Morton's neuroma, as well as other right foot conditions that have not been accepted by the Office as work related. However, none of the medical reports provides any impairment rating of appellant's accepted right foot conditions. The Office requested that appellant submit a report from her attending physician with an estimate of any permanent impairment due to her accepted foot conditions under the A.M.A., *Guides*. However, no report was submitted. The Office medical director noted that there was no medical evidence establishing that appellant had any permanent impairment due to her accepted right foot tendinitis or aggravation of a Morton's neuroma.⁹ The Board finds that appellant has failed to establish a *prima facie* claim for a schedule award.

CONCLUSION

Appellant failed to provide medical evidence establishing that she had any permanent impairment of the right foot causally related to her accepted employment injuries. Therefore, the Office properly denied her schedule award claim.

⁸ *Id.*

⁹ The A.M.A., *Guides* does not provide for any impairment rating due to a Morton's neuroma.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 18, 2003 is affirmed.

Issued: March 11, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member