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MICHELLE A. ZEIGLER, Appellant)	
)	
and)	Docket No. 04-362
)	Issued: March 31, 2004
U.S. POSTAL SERVICE, POST OFFICE,)	
Cleveland, OH, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member

ISSUE

On March 18, 1986 appellant, then a 25-year-old carrier, filed a notice of traumatic injury alleging on that dated she injured her left ankle in the performance of duty. The Office accepted her claim for sprain left ankle on March 19, 1986. The Office later expanded appellant's claim to include severe left ankle sprain with avulsion and chip fracture of the lateral malleolus, edema and fracture of the left fibula. On May 15, 1992 the Office granted appellant a schedule award for 13 percent permanent impairment of her left lower extremity.

Appellant filed a notice of recurrence of disability on June 8, 2001 on which she designated May 29, 2001 as the date of the recurrence due to her March 18, 1986 employment injury. She and the employing establishment indicated that she had not stopped work. The Office authorized conservative medical care on June 12, 2001. The Office authorized left ankle arthroscopy and stress x-rays on January 17, 2003.

Appellant requested an additional schedule award on May 15, 2003. The Office requested medical evidence regarding her permanent impairment from Dr. Robert M. Furnich, appellant's surgeon, who did not respond. On July 23, 2003 the Office referred appellant for a second opinion evaluation with Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon.

In his August 21, 2003 report, Dr. Kaffen concluded that appellant had a two percent permanent impairment of her left ankle. The Office medical adviser reviewed this report on September 24, 2003 and concurred with Dr. Kaffen's rating. By decision dated October 1, 2003, the Office denied appellant's claim for an additional schedule award finding that the current medical evidence established only a two percent impairment of appellant's left ankle and, therefore, did not support more than a 13 percent impairment of her left lower extremity for which she had already received a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

The Office's procedure manual further provides that the fifth edition of the A.M.A., *Guides* should be used to calculate impairment in decisions made after February 1, 2001. Specifically, the procedure manual states:

"If a claimant who has received a schedule award calculated under a previous edition of the A.M.A., *Guides* is entitled to additional benefits, the increased award will be calculated according to the fifth edition."³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ Federal (FECA) Procedure Manual, Part 2 – Claims, *Schedule Awards and Permanent Disability*, Chapter 2.808.7(4) (August 2002).

ANALYSIS

In this case, appellant received a schedule award for a 13 percent permanent impairment of her left lower extremity on May 15, 1992. She filed a claim requesting an additional schedule award on May 15, 2003. In accordance with the Act, the applicable regulation and the Office's procedure manual, appellant's current impairment must be evaluated under the fifth edition of the A.M.A., *Guides*.

Appellant did not submit any medical evidence in support of her request for a schedule award.⁴ The Office referred her for a second opinion evaluation with Dr. Kaffen. In his August 21, 2003 report, Dr. Kaffen noted appellant's history of injury and performed a physical evaluation. He found that appellant reached maximum medical improvement on April 1, 2003. Dr. Kaffen further found that appellant's left ankle demonstrated generalized swelling, tenderness to palpation over the medial anterior and lateral aspects of the ankle. He provided appellant's range of motion as extension 20 degrees, flexion 40 degrees, eversion 20 degrees and inversion 10 degrees with pain. Dr. Kaffen applied the A.M.A., *Guides* to his findings and concluded that appellant had a two percent impairment due to loss of range of motion.

The Office medical adviser reviewed this report on September 24, 2003 and concurred with Dr. Kaffen's findings. The A.M.A., *Guides* provide that extension of 20 degrees is not a ratable impairment and that flexion of 40 degrees is also not a ratable impairment.⁵ In accordance with the A.M.A., *Guides*, inversion of 10 degrees is a two percent impairment and eversion of 20 degrees is not a ratable impairment.⁶ As the only medical evidence in the record addressing appellant's current permanent impairment provides for a rating of two percent in accordance with the A.M.A., *Guides*, appellant has not established that she is entitled to an additional schedule award.

CONCLUSION

The Board finds that appellant is not entitled to an additional schedule award. She received a schedule award for 13 percent impairment of her left ankle in 1992. Appellant's current impairment rating in accordance with the appropriate edition of the A.M.A., *Guides* is two percent impairment. As appellant's current impairment rating is less than that found for the schedule award previously granted, she is not entitled to an additional schedule award.

⁴ The April 30, 2003 note from Dr. Robert D. Zaas, a Board-certified orthopedic surgeon, does not provide a clear opinion that appellant has reached maximum medical improvement and, therefore, cannot be used to calculate her impairment for schedule award purposes. *Michael Vining, claiming as administrator of the estate of Kevin M. Vining*, 52 ECAB 354, 356 (2001).

⁵ A.M.A., *Guides*, 537, Table 17-11.

⁶ A.M.A., *Guides*, 537, Table 17-12.

ORDER

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

Issued: March 31, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member