

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

RAYMOND K. DUGAN, Appellant

and

**U.S. POSTAL SERVICE, RARITAN CENTER
STATION, Edison, NJ, Employer**

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**Docket No. 05-896
Issued: February 16, 2006**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On March 4, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated December 15, 2004, adjudicating his schedule award claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a 10 percent permanent impairment of his right lower extremity.

FACTUAL HISTORY

On September 21, 2000 appellant, then a 40-year-old mail handler, filed a traumatic injury claim alleging that he injured his right foot when it became caught in a strap on the floor. The Office accepted his claim for a right foot fracture. Appellant underwent foot surgery on April 17, 2001, August 29, 2002, March 27, 2003 and February 26, 2004. On August 31, 2004 he filed a claim for a schedule award.

In an October 14, 2004 report, Dr. George L. Rodriguez, a Board-certified physiatrist, provided a history of appellant's condition and findings on physical examination. He stated that appellant experienced episodes of pain in the dorsal aspect of the foot radiating to the toes and intermittent pain along the lateral aspect of his entire right leg. Dr. Rodriguez stated:

“Evaluation of the [right] foot reveals that [appellant] has full range of motion in all joints with the exception of the 5th [metatarsophalangeal (MTP)] joint. It appears to be fused to the 4th [MTP] joint. The 5th toe is flaccid. There is full range of motion in all of the other four toes.”

* * *

“Evaluation of the right foot reveals that there is sensory loss along the dorsal aspect of the foot from the lateral dorsal crease to the lateral foot along the dorsal aspect of the foot to the 2nd through 5th toes. Additionally, there is circumferential absence of sensation to light touch of the 2nd, 3rd, 4th and 5th digits of the [right] foot. There is no abnormality in sensation along the plantar aspect of the foot, however. The great toe is spared. There is loss of voluntary F (flexion) of the 2nd through 5th toes of the [right] foot.”

Dr. Rodriguez calculated an 11 percent permanent impairment of appellant's right lower extremity which included 2 percent for 0 degrees of extension of the 5th MTP joint of the right lesser toe, based on Table 17-14 at page 537 of the A.M.A., *Guides*; and 5 percent for a Grade 0 deficit of the superficial peroneal nerve (5 percent multiplied by 100 percent), 2 percent for a Grade 0 deficit of the sural nerve (2 percent multiplied by 100 percent) and 2 percent for a Grade 4 deficit of the sciatic nerve,¹ based on Tables 16-10 at page 482 and Table 17-37 at page 552.

In a December 2, 2004 memorandum, the Office medical adviser stated that appellant had a 10 percent impairment of the right lower extremity which included 5 percent for a lesser toe extension deficit, based on Table 17-14 at page 537, 5 percent for a nerve deficit of the superficial peroneal nerve (5 percent multiplied by 100 percent), based on Table 17-37 at page 552 and Table 16-10 at page 482. He did not include any impairment for the sural nerve or sciatic nerve.

By decision dated December 15, 2004, the Office granted appellant a schedule award for 28.80 weeks for the period October 14, 2004 to May 3, 2005 based on a 10 percent permanent impairment of the right lower extremity.

¹ Dr. Rodriguez did not indicate the percentage of sensory deficit he chose from Table 16-10 at page 482. The sensory deficit for Grade 4 ranges from 1 to 25 percent. It appears that he chose 12 percent because 12 percent multiplied by the 17 percent for the sciatic nerve from Table 17-37 at page 552 equals 2.04 percent, which is rounded to 2 percent.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ sets 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 A.M.A., *Guides*⁴ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

ANALYSIS

Dr. Rodriguez calculated an 11 percent permanent impairment of appellant's right lower extremity which included 2 percent for 0 degrees of extension of the 5th MTP joint of the right lesser toe, based on Table 17-14 at page 537 of the A.M.A., *Guides*; and 5 percent for a Grade 0 deficit of the superficial peroneal nerve (5 percent multiplied by 100 percent), 2 percent for a Grade 0 deficit of the sural nerve (2 percent multiplied by 100 percent) and 2 percent for a Grade 4 deficit of the sciatic nerve, based on Tables 16-10 at page 482 and Table 17-37 at page 552.

The Office medical adviser⁶ stated that appellant had a 10 percent impairment of the right lower extremity which included 5 percent for a lesser toe extension deficit degrees, based on Table 17-14 at page 537 and 5 percent for a Grade 0 deficit of the superficial peroneal nerve (5 percent multiplied by 100 percent), based on Table 17-37 at page 552 and Table 16-10 at page 482. He did not include any impairment for the sural nerve or sciatic nerve. Figures 17-8 and 17-19 at page 551 of the A.M.A., *Guides* reveal that these sensory nerves are in the leg but not in the area of the foot. However, Dr. Rodriguez indicated that appellant was experiencing pain along his entire right leg, not just in his foot. The Office medical adviser did not explain why he did not include an impairment rating for deficits of the sural and sciatic nerves. Therefore, the case requires further development of the medical evidence. On remand, the Office should ask the Office medical adviser to explain why the impairment calculated by Dr. Rodriguez regarding the sural and sciatic nerve deficits should not be included in appellant's impairment rating. Following such further development as the Office deems necessary, it should issue an appropriate decision.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁵ 20 C.F.R. § 10.404.

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (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).

CONCLUSION

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is required.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 15, 2004 is set aside and the case remanded for further action consistent with this decision.

Issued: February 16, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board