United States Department of Labor
Employees' Compensation Appeals Board

R.G., Appellant	)	
and	)	**Docket No. 06-1261**
	)	**Issued: October 4, 2006**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Las Vegas, NV, Employer	)	

Appearances:
R.G., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 27, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 24, 2006 merit decision concerning his entitlement to schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.[1]

ISSUE

The issue is whether appellant met his burden of proof to establish that he has more than a 10 percent impairment of his left leg, for which he received a schedule award.

[1] The record also contains an August 25, 2005 decision in which the Office denied appellant's claim that he had disability on or after June 2, 2005 due to his May 4, 2004 employment injury. He has not appealed this decision to the Board and the matter is not currently before the Board.

FACTUAL HISTORY

On May 6, 2004 appellant, then a 49-year-old lead security screener, filed a traumatic injury claim alleging that he sustained a left foot and ankle injury on May 4, 2004 when he stepped on an uneven tram at work. He stopped work on May 5, 2004 and later returned to limited-duty work for the employing establishment.

The Office accepted that appellant sustained a left ankle sprain and left plantar fasciitis. Appellant received appropriate compensation for periods of disability.

In a report dated June 29, 2004, Dr. Gary D. Morris, an attending Board-certified orthopedic surgeon, indicated that appellant exhibited pain in the left anterolateral ankle on palpation and pain in the left plantar medial foot, but that sensation was intact and there was full range of motion of the ankle and subtalar joint. Dr. Morris diagnosed acute plantar fasciitis or traumatic plantar fasciitis and restricted appellant from engaging in prolonged walking or standing.[2]

The findings of August 19, 2004 magnetic resonance imaging (MRI) scan testing of the left foot revealed normal results. On January 10, 2005 appellant underwent a partial plantar fascial release of his foot which was authorized by the Office.

Appellant returned to light-duty work at the employing establishment on January 28, 2005 but his supervisor sent him home the same day because he could not take Percocet medication while at work. He returned to light-duty work on a full-time basis on April 17, 2005.

In a report dated June 2, 2005, Dr. Morris stated that appellant continued to have subjective complaints of left foot pain and indicated that he agreed with a recent functional capacity evaluation which showed that he could not perform his regular work duties.

Appellant stopped work on several occasions in mid 2005 claiming that the employing establishment sent him home because he was taking prescription medication.

In a note dated August 10, 2005, an employee named "Patty" at the office of Dr. Crispino S. Santos, an attending Board-certified anesthesiologist, stated that there were no alternatives to the prescription medications appellant was required to take during work hours.

By decision dated August 25, 2005, the Office denied appellant's claim on the grounds that he did not meet his burden of proof to establish that he had disability on or after June 2, 2005 due to his May 4, 2004 employment injury.

Appellant claimed that he was entitled to schedule award compensation due to his May 4, 2004 employment injury.

In a report dated October 10, 2005, Dr. Reynold L. Rimoldi, an attending Board-certified orthopedic surgeon, indicated that examination revealed full range of left ankle motion with no

[2] Dr. Morris later indicated that appellant could not walk or stand for more than four hours per day.

evidence of instability or tenderness over the deltoid ligament or lateral ligamentous complex. He noted that appellant had tenderness on medial palpation of the plantar fascia and heel and diminished sensation in the distribution of the medial and lateral plantar nerves on pinwheel testing with no sensation reported on the plantar aspect. Dr. Rimoldi stated:

> "Based on appropriate impairment evaluation using the [American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001)] one can rate [appellant] utilizing information on page 552, Table 17-32, [he] is not having function in the area of the medial and lateral plantar nerve status post plantar fascia release and based on my evaluation for disruption of the sensory function of the medial and lateral plantar nerves, which is what he exhibits, [appellant] has two percent whole person impairment for each branch, that is the medial and lateral plantar nerve when this is combined using the [C]ombined [V]alues [C]hart, this would account for four percent whole person impairment and this is based only secondary to the impairment as it relates to his right foot. I am not combining any evaluation as it pertains to his knees, as well as his lumbar spine, for which [appellant] communicates pain, but to the best of my knowledge was not part of the May 2004 work-related injury.

In a report dated December 5, 2005, Dr. Leonard A. Simpson, a Board-certified orthopedic surgeon, serving as an Office medical consultant, indicated that Dr. Rimoldi found that appellant had tenderness on medial palpation of the plantar fascia and heel and diminished sensation in the distribution of the medial and lateral plantar nerves on pinwheel testing with no sensation reported on the plantar aspect. Dr. Simpson stated:

> "This would be graded a maximal [G]rade 0 as per Table 16-10, page 482, fifth edition of the [A.M.A., *Guides*] or a 100 percent grade of a maximal 5 percent for branches of the medial plantar nerve and 5 percent for branches of the lateral plantar nerve or thus, a 10 percent impairment of the left lower extremity or leg. Records indicate no loss of ankle, subtalar or toe range of motion for a zero percent impairment. Records describe no atrophy or weakness for a zero percent impairment.
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> "Final award would be a 10 percent impairment of the left lower extremity of [the] leg with this equivalent to a 14 percent impairment of the left foot. Date of maximum medical improvement would have been reached by the time of the orthopedic evaluation dated October 10, 2005…."

By decision dated January 24, 2006, the Office granted appellant a schedule award for a 10 percent impairment of his right leg. The award ran for 28.8 weeks from October 10, 2005 to April 29, 2006.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulation[4] 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5]

ANALYSIS

The Office accepted that appellant sustained a left ankle sprain and left plantar fasciitis on May 4, 2004. The Office granted him a schedule award for a 10 percent impairment of his left leg and he later claimed that he was entitled to a greater amount of schedule award compensation.

The Board finds that the Office properly determined that appellant has no more than a 10 percent impairment of his left leg.

Dr. Simpson, a Board-certified orthopedic surgeon, serving as an Office medical consultant, properly reviewed the medical evidence of record, including the October 10, 2005 report of Dr. Rimoldi, an attending Board-certified orthopedic surgeon, and determined that appellant has a 10 percent impairment of his left leg. Dr. Simpson indicated that Dr. Rimoldi found that appellant had tenderness on medial palpation of the plantar fascia and heel and diminished sensation in the distribution of the medial and lateral plantar nerves on pinwheel testing with no sensation reported on the plantar aspect. Dr. Simpson determined that, under the relevant standards of the A.M.A., *Guides*, appellant had a 5 percent impairment for sensory loss associated with the left medial plantar nerve which was calculated by multiplying the maximum value for such sensory loss (5 percent) times the grade value of appellant's loss (100 percent).[6] He then correctly added this value to a 5 percent impairment for sensory loss associated with the left lateral plantar nerve which was calculated by multiplying the maximum value for such sensory loss (5 percent) times the grade value of appellant's loss (100 percent).[7] Dr. Simpson

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *Id*.

[6] *See* A.M.A., *Guides* 482, 552, Tables 16-10, 17-37.

[7] *Id.*

also properly indicated that there was no evidence to support an impairment rating for any other deficit, such as limited range of motion or weakness.[8]

Appellant did not submit any medical evidence showing that he has no more than a 10 percent impairment of his left leg or was otherwise entitled to greater schedule award compensation.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than a 10 percent impairment of his left leg, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 24, 2006 decision is affirmed.

Issued: October 4, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[8] Dr. Rimoldi indicated that examination revealed full range of left ankle motion with no evidence of instability or tenderness over the deltoid ligament or lateral ligamentous complex. He provided an impairment rating based on the whole person but a schedule award is not payable under section 8107 of the Act for an impairment of the whole person. *See Gordon G. McNeill*, 42 ECAB 140, 145 (1990). Dr. Simpson also provided an impairment rating for appellant's left foot, but it was appropriate for the Office to grant a schedule award for his left leg as his impairment extended from appellant's foot into an adjoining larger member, *i.e.*, his left leg. *See Tonya D. Bell*, 43 ECAB 845, 849 (1992).