

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

R.D., Appellant

and

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

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**Docket No. 06-1413
Issued: October 27, 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

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 13, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 31, 2006 schedule award decision. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award decision.

ISSUE

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

FACTUAL HISTORY

This is the second appeal before the Board. On September 21, 2000 appellant, a 40-year-old mail handler, filed a claim for benefits, alleging that he injured his right foot while in the performance of duty. The Office accepted appellant's claim for a right foot fracture. Appellant underwent foot surgery on April 17, 2001, August 29, 2002, March 27, 2003 and February 26, 2004.

In a report dated October 14, 2004, Dr. George L. Rodriguez, a Board-certified physiatrist, found that appellant had an 11 percent permanent impairment of the right lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (the A.M.A., *Guides*). He calculated this impairment by deriving a 2 percent impairment for zero degrees of extension of the fifth metatarsophalangeal joint of the right lesser toe, pursuant to Table 17-14, page 537 of the A.M.A., *Guides*; a 5 percent impairment for a Grade 0 sensory deficit of the superficial peroneal nerve (5 percent multiplied by 100 percent); a 2 percent impairment for a Grade 0 sensory deficit of the sural nerve (2 percent multiplied by 100 percent); and a 2 percent impairment for a Grade 4 deficit of the sciatic nerve, based on Table 16-10 at page 482 and Table 17-37 at page 552 of the A.M.A., *Guides*.

In a report dated December 2, 2004, the Office medical adviser found 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 of the A.M.A., *Guides*, 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 of the A.M.A., *Guides*. He did not include an impairment based on the sural or sciatic nerves.

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

In a February 16, 2006 decision,¹ the Board set aside the Office's December 15, 2004 decision. The Board found that the Office medical adviser failed to explain why he did not include Dr. Rodriguez's impairment ratings for deficits of the sural and sciatic nerves in his schedule award calculation. The Board found that, since Figures 17-8 and 17-19 at page 551 of the A.M.A., *Guides* indicate that the sural and sciatic nerves are in the leg, not the foot, and since Dr. Rodriguez had indicated that appellant was experiencing pain along his entire right leg, not just his foot, the Office medical adviser should have considered Dr. Rodriguez's sural and sciatic nerve findings in his impairment evaluation. The Board therefore remanded the case to the Office for further development of the evidence. The Board instructed the Office to ask the Office medical adviser to consider whether Dr. Rodriguez's impairment for the sural and sciatic nerve deficits should be included in appellant's impairment rating. The complete facts of this case are set forth in the Board's February 16, 2006 decision and are herein incorporated by reference.

In a report dated May 25, 2006, the Office medical adviser found that appellant had a nine percent permanent impairment of the right lower extremity pursuant to the A.M.A., *Guides*. He derived this rating by including impairments of the superficial peroneal nerve and sural nerves, as found by Dr. Rodriguez, but found that appellant was not entitled to impairment based on the sciatic nerve. The Office medical adviser explained his reasoning as follows:

“The sciatic nerve supplies nearly the whole of skin of the leg. The muscles of the back of the thigh, and those of the leg and foot. The sciatic nerve passes out

¹ Docket No. 05-896 (issued February 16, 2006).

of the pelvis and along the back of the thigh where it divides into two large branches, the tibial and common peroneal nerves. This division may take place at any point between the sacral plexus and the lower third of the thigh. These branches further divide into cutaneous nerves in the lower leg, ankle and foot (ratings for which are found in Table 17-37, page 552). Dr. Rodriguez provided an impairment rating for some of these cutaneous nerves (where he found deficits).”

The Office medical adviser noted that the conditions and the surgeries which the Office accepted -- right fifth metatarsal fracture, deformity of toe, lesion plantar nerve, sensory nerve loss of the right sural and intermediate dorsal cutaneous of peroneal, neurolysis surgery -- would not affect the sciatic nerve as it is too high up on the leg to be affected. However, the Office medical adviser noted that the sural and superficial peroneal nerves are located on the lateral side of the foot, over the area which covers the fifth metatarsal joint, an area which would be affected by the accepted conditions. He stated that Figure 17-8 of the A.M.A., *Guides* accurately depicted the distribution of these nerves. Based on the above reasons, the Office medical adviser calculated a two percent impairment for loss of the fifth metatarsal range of motion, a five percent lower impairment for superficial peroneal nerve sensory loss and a two percent impairment for the right sural nerve sensory loss, for a total nine percent right lower extremity impairment.

By decision dated May 31, 2006, the Office found that appellant was not entitled to an award for impairment greater than the 10 percent previously award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act² sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.⁴

ANALYSIS

In this case, the Office medical adviser found that appellant had a nine percent impairment for the right lower extremity based on Dr. Rodriguez’s findings of a two percent impairment for loss of the fifth metatarsal range of motion, a five percent lower impairment for

² 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

³ 5 U.S.C. § 8107(c)(19).

⁴ 20 C.F.R. § 10.404.

sensory impairment of the superficial peroneal nerve and a two percent impairment for sensory impairment of the right sural nerve, for a total nine percent right lower extremity impairment.

Although the Office had previously granted a schedule award for 10 percent permanent impairment of the right lower extremity, this previous schedule award erroneously allowed a 5 percent award for loss of motion of the fifth toe. Pursuant to Table 17-14,⁵ 2 percent is the maximum allowable impairment of the lower extremity for metatarsophalangeal extension of a lesser toe of less than 10 degrees. The Board therefore finds that appellant is only entitled to the two percent award for loss of motion of the toe.

The Office medical adviser provided a detailed, thorough explanation of why impairments based on sural and superficial peroneal nerves were related to the accepted conditions, as opposed to an impairment based on the sciatic nerve, to which he found appellant was not entitled. The Office medical adviser properly explained that, pursuant to Figure 17-8, the sural and peroneal nerves innervated the foot, while the sciatic nerve did not. He also explained that the sciatic nerve innervated the leg at a much higher level than appellant's impairments. The Board will thus affirm the finding that appellant does not have a permanent impairment due to sciatic nerve sensory loss. Regarding the sensory loss at the superficial peroneal and sural nerves, the Board affirms that pursuant to Table 17-37 of the A.M.A., *Guides* the maximum allowable sensory loss for the superficial peroneal nerve is five percent and for the sural nerve is two percent. Since appellant was graded as having severe loss, classified as a 100 percent loss, the Office properly awarded appellant the entire 5 percent and 2 percent impairment value for these nerves. The Office medical adviser's findings were sufficiently well reasoned and in conformance with the applicable figures of the A.M.A., *Guides*. The Board therefore finds that the Office medical adviser's finding of a nine percent impairment of the right lower extremity was proper.

Therefore, as there is no other probative medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that appellant was not entitled to more than a 10 percent permanent impairment to his right lower extremity, for which he already received compensation.

CONCLUSION

The Board finds that appellant has no more than a 10 percent impairment of the right lower extremity.

⁵ A.M.A., *Guides* 537.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 27, 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