

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

M.D., Appellant

and

**FEDERAL JUDICIARY, FEDERAL PUBLIC
DEFENDERS, Sioux City, IA, Employer**

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**Docket No. 07-553
Issued: May 23, 2007**

Appearances:
Appellant, 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 December 20, 2006 appellant filed a timely appeal from the November 13, 2006 merit decision of the Office of Workers' Compensation Programs, which awarded compensation for permanent impairment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of her schedule award.

ISSUE

The issue is whether appellant has more than an eight percent permanent impairment of her left lower extremity.

FACTUAL HISTORY

On October 7, 2005 appellant, then a 55-year-old branch administrative assistant, sustained an injury in the performance of duty when she walked down a flight of stairs, missed the last step and fell. The Office accepted her claim for a closed fracture of the left lateral malleolus, temporary aggravation of right shoulder impingement syndrome and temporary

aggravation of bilateral knee osteoarthritis. The Office found that the temporary aggravations ended by November 30, 2005.¹

On May 24, 2006 appellant claimed a schedule award for her fractured left ankle. The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Andrew S. Lee, a specialist in physical medicine and rehabilitation, who examined appellant on October 16, 2006. Dr. Lee related her history and reviewed the findings of past x-rays. He described his findings on physical examination and found that appellant had reached maximum medical improvement. For a calf circumference difference of 1.9 centimeters, Dr. Lee found an eight percent permanent impairment of the left lower extremity. For seven degrees ankle dorsiflexion, he found a seven percent impairment. He found no impairment for an ankle fracture with four degrees valgus angulation. Because muscle atrophy and range of motion deficits may not be combined, Dr. Lee gave appellant the larger of the two impairments: the eight percent impairment for calf atrophy.

On November 1, 2006 an Office medical adviser reviewed Dr. Lee's findings and determined that his rating was correct. On November 13, 2006 the Office issued a schedule award for an eight percent permanent impairment of the left lower extremity.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act² authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.³

ANALYSIS

Dr. Lee compared the maximum circumference of appellant's right calf, 43.5 centimeters, with the maximum circumference of the left, 41.6. According to Table 17-6, page 530, of the A.M.A., *Guides*, the 1.9 centimeter difference represents an eight percent impairment of the lower extremity. Appellant's 0.1 centimeter difference in thigh circumference does not increase this rating.

Appellant also has impairment of the left lower extremity due to loss of ankle motion. Under the A.M.A., *Guides* 537, Table 17-11, seven degrees of ankle dorsiflexion (extension) represents a seven percent impairment of the lower extremity. Plantar flexion of 62 degrees

¹ X-rays on October 7, 2005 showed a somewhat oblique fracture through the distal fibula at the base of the lateral malleolus, not a fracture of the lateral malleolus itself.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the A.M.A., *Guides* (5th ed. 2001).

represents no impairment. Under the A.M.A., *Guides* 537, 31 degrees inversion and 18 degrees eversion represent no impairment. Appellant has no impairment due to loss of toe motion.⁴

Dr. Lee further consulted the diagnosis-based estimates in the A.M.A., *Guides* 547, Table 17-33. An extra-articular ankle fracture with four degrees valgus angulation represents no impairment of the lower extremity.

The A.M.A., *Guides* 526, Table 17-2, indicates that muscle atrophy may not be used together with loss of motion for evaluating a single impairment. The A.M.A., *Guides* states: “If more than one method can be used, the method that provides the higher rating should be adopted.”⁵ The Office followed these instructions and appropriately awarded appellant compensation for an eight percent impairment of her left lower extremity due to calf atrophy.⁶

Appellant disagrees with the number of weeks awarded: “Because I suffer with rheumatoid and osteoarthritis, the break has exacerbated the pain in my left ankle. Also, the lesions that formed on my ankle have not healed due to diabetes.” A person who has an intra-articular fracture and subsequent rapid onset of arthritis may receive a schedule award for both arthritis and a diagnosis-based estimate.⁷ But appellant’s fracture was extra-articular, a somewhat oblique fracture of the distal fibula located opposite the base of the tibia’s lateral malleolus. No physician has reported arthritis in appellant’s left ankle, and no physician has reported that the well-healed closed fracture of the distal fibula is permanently aggravating any rheumatoid or osteoarthritic condition. In any event, any impairment due to arthritis may not be combined with impairment due to muscle atrophy or loss of motion.⁸ Further, no physician has reported that the October 7, 2005 employment injury caused lesions to form on appellant’s left ankle. Dr. Lee reported no such lesions when he examined appellant on October 16, 2006. The Board finds that the Office properly applied the A.M.A., *Guides* to Dr. Lee’s clinical findings and properly awarded compensation for an eight percent permanent impairment of the left lower extremity.

CONCLUSION

The Board finds that appellant has no more than an eight percent permanent impairment of her left lower extremity causally related to her October 7, 2005 employment injury.

⁴ A.M.A., *Guides* 537, Table 17-14.

⁵ *Id.* at 527.

⁶ The Act provides 288 weeks’ compensation for the total loss of a leg. 5 U.S.C. § 8107(c)(2). Partial losses are proportionate. *Id.* at § 8107(c)(19). An eight percent impairment of the lower extremity, therefore, entitles appellant to 23.04 weeks’ compensation, which the Office awarded.

⁷ A.M.A., *Guides* 544.

⁸ *Id.* at 526, Table 17-2.

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 2007
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