

This case has been before the Board on two prior occasions. Appellant filed a claim alleging that on May 30, 1982 he became aware that his atherosclerotic coronary heart disease, peripheral and cerebral vascular disease, degenerative joint disease, essential hypertension, hyperlipidemia, vertigo and diabetes mellitus were attributable to stress arising in the

performance of duties. The Office accepted his claim for aggravation of coronary and carotid artery disease and hypertension. Appellant filed a claim for recurrence of disability on November 13, 1998. The Office denied this claim on June 16, 1999. In a December 4, 2000 decision,¹ the Board found that the claim was not in posture for decision and required additional development of the medical evidence. The Office undertook additional development of the medical evidence and, by decision dated May 11, 2001, denied his claim for recurrence of disability finding that he had not established that the loss of vision in his left eye was due the accepted aggravation of coronary and carotid artery disease and hypertension on May 16, 2002 the Board again found that the case was not in posture for a decision.² The Board remanded the case for the Office to resolve a conflict of medical opinion evidence between appellant's physician and an Office referral physician. The facts and the circumstances of the case as set out in the Board's prior decisions are incorporated herein by reference.

In a letter dated September 24, 2002, the Office requested additional factual and medical evidence from appellant regarding his claim for an injury to his feet. The Office subsequently accepted the additional conditions of temporary aggravation of peripheral vascular disease and temporary aggravation of peripheral neuropathy.³ On March 7, 2005 appellant requested a schedule award for loss of parts of his toes on both feet.

In a letter dated April 25, 2005, the Office requested additional information for schedule award purposes. Appellant submitted notes dated November 12, 1997 through May 11, 2005 from his attending podiatrist, Dr. Steven L. Goldman. Dr. Joseph Tenenbaum, an attending Board-certified internist of professorial rank, noted that appellant developed gangrene in multiple toes with subsequent amputation following his aortic aneurysm surgery in 1982. He opined that appellant's amputations were associated with atherosclerotic vascular disease.⁴ Dr. Tenenbaum completed the form report requested by the Office. He indicated that appellant reached maximum medical improvement in 1999.

The Office referred appellant for a second opinion evaluation with Dr. Daniel J. Feuer, a Board-certified neurologist, who noted appellant's history of injury and complaints of pain in his right big toe and feet. Dr. Feuer found that sensory examination was remarkable for hypesthesia to pinprick and vibratory sensation in a stocking distribution. He diagnosed moderate peripheral

¹ Docket No. 99-2421 (issued December 4, 2000).

² Docket No. 01-1830 (issued May 16, 2002).

³ The Office accepted the additional conditions of impaired vision and bilateral iliac artery aneurysms as due to his employment on April 20, 2005. The Office also informed appellant that his claim had been accepted for aggravation of atherosclerotic coronary heart disease, aggravation of atherosclerotic peripheral vascular disease, aggravation of cerebrovascular disease, aggravation of peripheral neuropathy, aggravation of peripheral vascular disease and aggravation of hypertension. The Office denied his conditions of degenerative joint disease, hyperlipidemia and diabetes as preexisting conditions not related to appellant's federal employment.

⁴ The Office has not issued a final decision determining whether this surgery and its consequences are casually related to the accepted aggravation of atherosclerotic peripheral vascular disease or to surgical treatment for gangrene following aneurysm surgery in 1982. Therefore, the Board cannot address this issue for the first time on appeal. 20 C.F.R. § 501.2(c).

neuropathy affecting distal sensation and opined that this condition was due to diabetes mellitus and age.

The Office medical adviser reviewed the medical record on February 20, 2007 and found that there was no ratable impairment due to the accepted employment injuries. By decision dated June 27, 2007, the Office denied appellant's claim for a schedule award for impairment to his feet.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulations⁶ 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.

ANALYSIS

The Office has accepted appellant's claim for aggravation of coronary and carotid artery disease and hypertension, temporary aggravation of peripheral vascular disease and temporary aggravation of peripheral neuropathy, impaired vision and bilateral iliac artery aneurysms as well as aggravation of atherosclerotic coronary heart disease, aggravation of atherosclerotic peripheral vascular disease, aggravation of cerebrovascular disease and aggravation of hypertension.

The second opinion physician, Dr. Feuer, a Board-certified neurologist, and the Office medical adviser attributed appellant's current foot condition to peripheral neuropathy. As the Office has only accepted a temporary aggravation of peripheral neuropathy, appellant has not sustained a permanent impairment of a scheduled member, his feet, as the result of an accepted employment-related injury. Appellant is not therefore entitled to a schedule award for his foot impairments based on the conditions currently accepted by the Office.⁷

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a permanent impairment of a scheduled member entitling him to a schedule award.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Rosie Esquivias*, 41 ECAB 243, 255 (1989) (finding that if appellant's employment-related aggravation was found to be a permanent aggravation rather than a temporary one, then and only then the Office should consider his claim for schedule award purposes); *George Diamond*, Docket No 06-335 (issued June 2, 2006); *Hazel G. Johnson*, Docket No. 06-174 (issued March 14, 2006).

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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