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A.S., Appellant)	
)	
and)	Docket No. 08-2080
)	Issued: April 1, 2009
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, IL Employer)	
)	

Case Submitted on the Record

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

On July 21, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 5, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit issues of this case.

The issue is whether appellant has more than 20 percent impairment of her left lower extremity for which she has received a schedule award.

FACTUAL HISTORY

On November 9, 2004 appellant then a 48-year-old sales associate, filed a traumatic injury claim alleging that on November 5, 2004 she tripped and fractured her left ankle in the performance of duty. On November 8, 2004 she underwent an open reduction and internal fixation of the left distal tibia and fibula with plates and screws. The Office accepted appellant's claim for fractures of the distal tibia and fibula.

Appellant requested a schedule award on May 29, 2006. In a report dated December 19, 2006, Dr. Steven A. Kodros, an orthopedic surgeon, examined appellant for schedule award purposes noting that her chief complaint was pain. On physical examination, he found no swelling or deformity. Dr. Kodros provided range of motion as 15 degrees of dorsiflexion and 30 degrees of plantar flexion with normal inversion and eversion. Appellant had some diminished sensation along the medial aspect of the ankle and hindfoot. X-rays revealed one broken small fragment screw in the distal tibia. Dr. Kodros attributed appellant's symptoms to residual post-traumatic arthrofibrosis or periarticular soft tissue adhesions. He stated that appellant had reached maximum medical improvement and found 20 percent lower extremity impairment due to intra-articular ankle fracture with displacement.

The Office medical adviser reviewed this report on January 22, 2007 and agreed with Dr. Kodros that appellant had 20 percent impairment of the left lower extremity due to intra-articular ankle fracture with displacement and cited to Table 17-33 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.¹

By decision dated January 31, 2007, the Office granted appellant a schedule award for 20 percent impairment of her left lower extremity.

On September 13, 2007 appellant filed a recurrence of disability claim alleging that her ankle continued to hurt. The Office accepted this claim on November 2, 2007. On November 2, 2007 Dr. Bradley, an orthopedic surgeon, performed a surgical removal of the hardware in the distal tibia and fibula.

Appellant requested a schedule award on December 26, 2007. In a report dated February 26, 2008, Dr. Kodros examined appellant and found that she was not entitled to an additional schedule award. The Office medical adviser reviewed this report on April 17, 2008 and concurred with Dr. Kodros' findings.

By decision dated May 5, 2008, the Office denied appellant's claim for an additional schedule award.

¹ A.M.A., *Guides*, 5th ed. (2000).

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ 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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴ Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁵

ANALYSIS

Appellant's physician, Dr. Kodros completed a narrative report on December 19, 2006 and opined that appellant was entitled to a schedule award for 20 percent impairment of her left lower extremity due to intra-articular ankle fracture with displacement. The Office medical adviser agreed with Dr. Kodros and provided the appropriate citation to the A.M.A., *Guides*.⁶ The Office granted appellant a schedule award based on these reports.

Appellant then underwent additional surgery for removal of hardware. Dr. Kodros again examined appellant on February 26, 2008 and opined that she continued to have 20 percent impairment of the left lower extremity. The Office medical adviser again agreed. There is no medical evidence in the record which suggests that appellant has more than 20 percent impairment of her left lower extremity for which she has received a schedule award. The Office properly denied appellant's request for an additional schedule award.

CONCLUSION

The Board finds that appellant has submitted no medical evidence supporting that she has more than 20 percent impairment of her left lower extremity for which she has received a schedule award.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

⁶ A.M.A., *Guides* 547, Table 17-33.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Program dated May 5, 2008 is affirmed.

Issued: April 1, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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