

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CONNIE S. WITTEN and DEPARTMENT OF COMMERCE,  
U.S. CENSUS BUREAU, Kansas City, Kans.

*Docket No. 96-2421; Submitted on the Record;  
Issued October 5, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant is entitled to a greater than three percent permanent impairment of her right leg for which she received a schedule award.

The Board has duly reviewed the case record and finds that appellant has no more than a three percent permanent impairment.

On June 30, 1994 appellant, then a 49-year-old field representative, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on June 21, 1994 she twisted her ankle while stepping off uneven pavement. The Office of Workers' Compensation Programs accepted the claim for a right ankle sprain on November 9, 1995.

Appellant filed a claim for a schedule award on May 6, 1996.

In a treatment note dated October 10, 1995, Dr. William L. Dillon, appellant's attending Board-certified orthopedic surgeon, indicated that she had "findings of chronic instability in her ankle." Dr. Dillon stated that he would rate the impairment at 4 percent of the whole body, 10 percent for the lower extremity and 14 percent for the foot due to the chronic instability. The Office requested an Office medical adviser to review the record and determine appellant's permanent impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The Office medical adviser indicated that Dr. Dillon's impairment rating could not be accepted as he did not report the range of motion in appellant's ankle and recommended that appellant be referred to a second opinion physician for a determination regarding appellant's schedule award.

By letter dated March 13, 1995, the Office referred appellant to Dr. George Varghese, a Professor, Department of Rehabilitation Medicine at The University of Kansas Medical Center, for a second opinion evaluation pursuant to the A.M.A., *Guides*. In a report dated April 8, 1996,

Dr. Varghese noted that appellant continued to wear a leg brace when walking for a long period of time. Dr. Varghese noted that appellant's right ankle showed no swelling or vasomotor changes and that stability in the ankle joint appeared normal. Dr. Varghese noted that appellant had range of motion of 20 degrees of dorsiflexion, 35 degrees of plantar flexion, 30+ degrees of inversion and 15 degrees of eversion. He further noted that appellant's neurologic examination was normal and no sensory deficit was noted. Dr. Varghese concluded that appellant had a three percent impairment of her right leg based upon pain. In support of this conclusion, Dr. Varghese noted that appellant had no range of motion rating according to Tables 42 and 43, as her ankle range of motion was within normal limits, a 0 loss of strength rating as there was no loss of strength, and a 60 percent grade, according to Table 20, for pain in the distal aspect of the fibula which equated to a 3 percent impairment rating using Table 68. The Office medical adviser concurred with Dr. Varghese's impairment rating.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulations<sup>2</sup> set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of body members listed in the schedule. The Act, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method for making such a determination rests in the sound discretion of the Office. The Office has adopted and the Board has approved the use of the A.M.A., *Guides*,<sup>3</sup> as an appropriate standard for evaluating schedule losses.<sup>4</sup>

As Dr. Dillon did not correlate his findings upon examination to the A.M.A., *Guides*, nor explain how he arrived at a 10 percent rating of the lower extremity, the Office requested that an Office medical consultant review the record and determine appellant's permanent impairment pursuant to the A.M.A., *Guides*. The Office medical adviser indicated, in his March 6, 1996 report, that the ratings by Dr. Dillon could not be accepted as he had not reported the range of motion in appellant's ankle and recommended that appellant be referred to a second opinion physician for a determination pursuant to the A.M.A., *Guides*. Dr. Varghese, the second opinion physician and a Professor, Department of Rehabilitation Medicine at The University of Kansas Medical Center, opined that appellant's pain in the distal aspect of the fibula and her ankle was within normal limits for the range of motion, that appellant had a three percent impairment. The Office medical adviser concurred in this assessment.

The Board finds that the report of Dr. Varghese, the orthopedic consultant, is based on an appropriate use of the A.M.A., *Guides*, is well rationalized and represents the weight of medical evidence. Appellant has sustained no more than a three percent impairment of the right leg. Accordingly, the Board finds that the July 1, 1996 schedule award was properly issued for a three percent permanent impairment to the right leg.

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> A.M.A., *Guides* (4th ed. 1993).

<sup>4</sup> *James A. Sellers*, 43 ECAB 924 (1992).

The decision of the Office of Workers' Compensation Programs dated July 1, 1996 is hereby affirmed.<sup>5</sup>

Dated, Washington, D.C.  
October 5, 1998

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> Appellant in her appeal also requests payment for mileage to her doctor's office and reimbursement for the two braces she has purchased. As the Office has not issued a final decision regarding payment for mileage to her doctor's office and the two braces appellant purchased, the Board has no jurisdiction to consider this issue. 20 C.F.R. § 501.2(c).