

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAY A. SCHWERR and DEPARTMENT OF JUSTICE,  
BORDER PATROL, San Diego, CA

*Docket No. 97-2831; Submitted on the Record;  
Issued August 10, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has more than two percent permanent impairment of his right lower extremity for which he received a schedule award.

The Board has duly reviewed the case on appeal and finds that appellant has no more than two percent permanent impairment of his right lower extremity for which he received a schedule award.

Appellant filed a claim alleging on September 26, 1996 he sprained his ankle in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for right ankle sprain on March 10, 1997. Appellant filed a claim requesting a schedule award on February 26, 1997. By decision dated August 20, 1997, the Office granted appellant a schedule award for two percent permanent impairment of his right lower extremity.

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.304 of the implementing federal regulations,<sup>2</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants the Office adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>3</sup> as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.<sup>4</sup>

In this case, appellant's attending physician, Dr. Thomas W. Harris, completed a report on December 13, 1996 and found that appellant had reached maximum medical improvement in

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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> *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

regard to his right lower extremity. Dr. Harris provided a detailed report of physical findings and noted that appellant had no ligamentous instability, no impairment on x-ray, no loss of range of motion, no weakness and no arthritis of the subtalar joint. He indicated that appellant's only impairment was occasional minimal ankle pain and stiffness with rising from a sitting position. Dr. Harris did not provide an impairment rating.

The Office orthopedic consultant, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, reviewed Dr. Harris' December 13, 1996 report and applied the A.M.A., *Guides*. Dr. Harris found that appellant had pain which was forgotten during activity<sup>5</sup> or 25 percent impairment of the superficial peroneal nerve.<sup>6</sup> He properly multiplied the value of the nerve, 5, by the percentage of impairment for pain, 25, for an impairment rating of 2 percent of the right lower extremity.

As there is no medical evidence supporting a greater impairment rating, the Office properly granted appellant a schedule award for two percent impairment of his right lower extremity.

The decision of the Office of Workers' Compensation Programs dated August 20, 1997 is hereby affirmed.

Dated, Washington, D.C.  
August 10, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> A.M.A., *Guides*, 48, Table 11.

<sup>6</sup> A.M.A., *Guides*, 89, Table 68.