

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYDIA G. GASSER and U.S. POSTAL SERVICE,
POST OFFICE, Antioch, Tenn.

*Docket No. 96-1542; Submitted on the Record;
Issued May 24, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established entitlement to a schedule award based on a work-related injury to her foot.

The Board has duly reviewed the case on appeal and finds that appellant's employment-related foot injury does not entitle her to a schedule award.

In this case, appellant filed a claim for a schedule award based on her work-related plantar keratosis and acute bursitis of her left foot. In medical reports dated August 23, 1994 and March 13, 1995, Dr. Robert K. Johnston, appellant's treating physician Board-certified in orthopedic surgery, stated that appellant had a five percent permanent impairment of the left lower extremity but failed to support that finding with reference to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. In a medical report dated April 18, 1995, Dr. Harry L. Collins, Board-certified in orthopedic surgery and acting as an Office of Workers' Compensation Programs' medical adviser, reviewed the medical record and determined that appellant had a zero percent permanent impairment for schedule award purposes. The Office then referred the record to Dr. Norman L. Sims, an Office consultant Board-certified in orthopedic surgery. In a May 15, 1995 medical report, he stated, "A serial review of the x-rays from the preoperative period through the course of treatment shows the fourth metatarsal osteotomy was performed in a manner that meets the medical standards and it has healed in [a] satisfactory position," and that "Overall alignment is certainly within normal limits." Dr. Sims then stated that appellant had a two percent permanent impairment of the left leg and three percent permanent impairment on the left foot based on loss of weight transfer of the fourth metatarsal based on the A.M.A., *Guides*.¹ He also stated that because the "fourth digit is partially ankylosed in a position of function, there is a 12 percent permanent impairment of the foot and a 17 percent permanent impairment of the toe."

¹ The doctor cited A.M.A., *Guides* (4th ed. 1993), 86, Table 64.

In a June 30, 1995 medical report, Dr. Collins again reviewed the medical record and stated that Dr. Sims had misinterpreted the record by finding that appellant had a disability due to loss of weight transfer of the fourth metatarsal. He noted that surgery had been performed to relieve this condition, and that, since x-rays failed to establish dorsal displacement of the metatarsal head greater than five millimeters while weight bearing, appellant had a zero percent permanent impairment. Dr. Collins further noted that Dr. Sims incorrectly attributed disability on the basis of ankylosis based on the metatarsophalangeal joint. Dr. Collins noted that, based on Dr. Sims' evaluation, appellant's dorsiflexion of the fourth metatarsophalangeal joint was possible to 45 to 50 degrees and that she could flex it to neutral, thus resulting in a finding of no ratable impairment because there was no disability to appellant's metatarsophalangeal joint.²

The Office then referred the medical record along with Dr. Collins' report to Dr. Sims for a supplemental opinion.³ In a medical report dated August 4, 1994, Dr. Sims stated that he agreed with the other reviewers and that, while there was an abnormality in appellant's left toe of the left foot, there was no ratable impairment. Regarding the loss of weight transfer as a result of the metatarsal osteotomy, Dr. Sims stated that he was unable to measure the dorsal displacement of the fourth metatarsal head, and, although the left foot was not normal, the rating for the loss of weight transfer was "fair."

On February 15, 1996 the Office issued a decision finding that appellant was not entitled to a schedule award for impairment of her left foot.

Under section 8107 of the Federal Employees' Compensation Act⁴ and section 10.304 of the implementing federal regulations,⁵ 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 A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁶

In the present case, the weight of the medical evidence rests with Dr. Collins, Board-certified in orthopedic surgery and an acting Office medical adviser, who explained in detail with appropriate references to the A.M.A., *Guides* that, because appellant's x-rays failed to reveal a "dorsal displacement of the metatarsal head greater than 5 millimeters while weight bearing," and that her dorsiflexion of 45 to 50 degrees and flex to neutral, appellant did not rate an impairment rating. The Board has held that the weight of the medical evidence from an

² A.M.A., *Guides*, 78, Table 45.

³ Since Dr. Sims was an Office consultant, no conflict in medical opinion occurred between Drs. Sims and Collins. *Pierre W. Peterson*, 39 ECAB 955 (1988).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 20 C.F.R. § 10.304.

⁶ *James A. England*, 47 ECAB 115 (1995).

Office medical adviser which is the only medical evidence of record conforming to the A.M.A., *Guides* can constitute the weight of the medical evidence.⁷

The decision dated February 15, 1996 of the Office of Workers' Compensation Programs awarding appellant is affirmed.

Dated, Washington, D.C.
May 24, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Lena P. Hundley*, 46 ECAB 643 (1995).