

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN P. KAKAPICH, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Akron, OH

*Docket No. 98-1831; Submitted on the Record;
Issued April 21, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has greater than a seven percent permanent impairment for each lower extremity for which he received a schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim for bone contusions with nerve hypertrophy. Appellant worked intermittently but stopped working on May 9, 1996.

In his report dated November 4, 1997, Dr. Charles J. Paquelet, a Board-certified orthopedic surgeon, considered appellant's history of injury, and performed a physical examination in which he stated that he could manipulate the great toes no more than 30 degrees and the lesser toes no more than 10 degrees. He stated that appellant had 10 degrees inversion and 20 degrees eversion of both feet, and that appellant had no active flexion or extension of any of the toes of either foot. Dr. Paquelet concluded that appellant's physical impairment for both feet is identical. Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994), he determined that for each foot, appellant had a two percent impairment for the great toe and a two percent impairment for the lesser toe or a total foot impairment of four percent and an impairment to the whole person of eight percent.

In a report dated November 26, 1997, Dr. Nabil F. Angley, a Board-certified orthopedic surgeon, reviewed Dr. Paquelet's November 4, 1997 report and, using the A.M.A., *Guides* (4th ed. 1994), determined that appellant had a seven percent permanent impairment in each of his lower extremities. Specifically, he determined that, using Table 45, page 78, the left big toe motion of less than 15 degrees equaled a 7 percent impairment of the left foot or a 5 percent impairment of the left lower extremity, and the lesser toes motion of less than 10 degrees equaled a 3 percent impairment of the foot or a 2 percent impairment of the left lower extremity. Adding the five percent impairment of the left foot to the two percent impairment of the foot, Dr. Angley obtained a seven percent impairment of the left lower extremity. Also, using Table 45, pages 78, he determined that the right big toe motion of less than 15 degrees equaled a 7 percent

impairment of the left foot or a 5 percent impairment of the lower extremity and the lesser toes motion of 10 degrees equaled a 3 percent impairment of the foot or a 2 percent impairment of the lower extremity. He added the five percent impairment of the right lower extremity to the two percent impairment of the right lower extremity to obtain a total seven percent impairment to the right lower extremity.

By decision dated December 16, 1997, the Office issued appellant a schedule award for a seven percent permanent impairment for each of his lower extremities.

By letter dated January 1998, appellant requested reconsideration of the Office's decision and submitted additional evidence consisting of medical records from the Cleveland Clinic Foundation Pain Management Center dated from September 3 through 10, 1996 and a prescription for a shoe.

By decision dated February 27, 1998, the Office denied appellant's request for reconsideration.

The Board finds that appellant has no greater than a seven percent impairment to each of his lower extremities.

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function, or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² 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.³

In the present case, in his November 26, 1997 report, Dr. Angley, a Board-certified orthopedic surgeon, reviewed Dr. Paquelet's November 4, 1997 report and, using the A.M.A., *Guides* (4th ed. 1994), Table 45, page 78, determined that appellant had a 7 percent permanent impairment in each of his lower extremities based, in part, on Dr. Paquelet's findings that the range of motion of appellant's big toes was less than 30 degrees and the range of motion of his little toes was less than 10 degrees. Dr. Angley's use of the A.M.A., *Guides* (4th ed. 1994) and his determination that appellant had a seven percent permanent impairment in each of his lower extremities is proper and consistent with the evidence. The evidence appellant submitted consisting of the medical records from the Cleveland Clinic Foundation Pain Management Center dated from September 3 through 10, 1996 and the prescription note for a shoe does not

¹ 5 U.S.C. § 8107 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

³ *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

document that appellant had more than a seven percent impairment to each of his lower extremities. Appellant has therefore failed to establish his claim.

The decisions of the Office of Workers' Compensation Programs dated February 27, 1998 and December 16, 1997 are hereby affirmed.

Dated, Washington, D.C.
April 21, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member