U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of DELBERT ACKERMAN and DEPARTMENT OF THE ARMY, ABERDEEN PROVING GROUND, Aberdeen, MD

*Docket No. 97-2432; Oral Argument Held January 19, 2000; Issued March 1, 2000*

Appearances*: J. Peter Puglia, Esq.,* for appellant*; Sheldon G. Turley, Jr., Esq.,* for the Director, Office of Workers' Compensation Programs.

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## DECISION and ORDER

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

The issue is whether appellant has more than a 14 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 a 14 percent permanent impairment of his right lower extremity for which he received a schedule award.

Appellant filed a claim alleging that on April 19, 1995 he sustained a fractured right ankle when he was struck in the leg with a pipe while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for fracture of the right tibia. On July 8, 1996 appellant filed a claim for a schedule award. On April 14, 1997 the Office granted appellant a schedule award for a 14 percent permanent impairment of his right leg.

Under section 8107 of the Federal Employees' Compensation Act[1] and section 10.304 of the implementing federal regulations,[2] 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, (A.M.A.,) *Guides to the Evaluation of Permanent Impairment* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[3]

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[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.304.

[3] *James A. England*, 47 ECAB 115 (1995).

In support of his claim for a schedule award, appellant submitted medical reports from his treating physicians. In a report dated January 6, 1997, Dr. V.M. Osteria, a Board-certified orthopedic surgeon, stated that appellant had a mild varus angulation of the fracture site of approximately seven degrees, but had no arthritis or ankylosis and had anatomic alignment of the joint. The physician added that appellant had a constant low level ache at the fracture site which increased with bad weather or physical activity. Dr. Osteria further stated that appellant had evidence of injury to the lateral cutaneous nerve of the calf, or sural nerve, evidence by a positive Tinel's sign and an area of hypesthesia in the distribution of the nerve at the level of the fracture site and below. With respect to appellant's range of motion in his ankle joint, Dr. Osteria indicated that he had "full" degrees varus, "full" valgus, 15 degrees of flexion and 10 degrees of extension. The physician concluded that appellant had reached maximum medical improvement and that pursuant to the fourth edition of the A.M.A., *Guides* appellant had a 15 percent permanent impairment of the whole person.

By letter dated February 18, 1997, the Office explained to Dr. Osteria that it did not issue schedule awards based on whole person impairment ratings and requested that the physician provide an opinion in terms of the total percentage of impairment to appellant's lower extremity.

In a response dated March 5, 1997, Dr. Osteria stated that, according to the A.M.A., *Guides*, a 15 percent impairment of the whole person is equivalent to a 37 percent impairment of the lower extremity.

The Board has held that if an examining physician does not use the A.M.A., *Guides* to calculate the degree of permanent impairment, it is proper for an Office medical adviser to review the record and apply the A.M.A., *Guides* to the examination findings reported by the examining physician.[4] Dr. Osteria referred to the A.M.A., *Guides* in reports dated January 6 and March 5, 1997, but did not explain fully the calculations behind the conclusion that appellant had a 15 percent permanent impairment of the whole person, or a 37 percent impairment of the right lower extremity, with specific reference to the A.M.A., *Guides* for each calculation.

An Office medical adviser reviewed these findings on April 8, 1997 and applied the A.M.A., *Guides*.[5] He found that 15 degrees of flexion, or plantar flexion, equated to a 7 percent impairment of the right lower extremity,[6] and that 10 degrees of extension, or dorsiflexion, also equated to a 7 percent impairment of the right lower extremity.[7] The Office medical adviser then combined these figures, pursuant to the A.M.A., *Guides*, to conclude that appellant has 14 percent impairment of the right lower extremity due to loss of range of motion.[8]

The Board has reviewed the calculations of the Office medical adviser and finds that the Office medical adviser properly calculated each of appellant's impairments pursuant to the

[4] *Lena P. Huntley*, 46 ECAB 643 (1995).

[5] A.M.A., *Guides* (fourth edition, 1993).

[6] A.M.A., *Guides*, 78, Table 42.

[7] *Id.*

[8] A.M.A., *Guides*, 322.

A.M.A., *Guides* and properly concluded that appellant has a 14 percent impairment of the right lower extremity. Initially, we note that Dr. Osteria diagnosed only a mild varus angulation of the fracture site of about seven degrees, which is not ratable under the diagnosis-based method of impairment calculation usually preferred for rating fractures with degenerative changes.[9] Therefore, the Office medical adviser properly evaluated appellant's degree of impairment using the range of motion estimates set forth in the A.M.A., *Guides*.[10] In addition, while Dr. Osteria did specifically note that appellant suffered from a constant ache in his ankle, the impairment percentages shown in the A.M.A., *Guides*, generally make allowance for the pain that may accompany the impairing conditions of the musculoskeletal system.[11] Finally, while Dr. Osteria also noted that appellant showed evidence of sural nerve damage, with hypesthesia, or decreased sensation, with respect to the sensory and motor nerves of the lower extremity, the A.M.A., *Guides* only provides estimates of impairment based on complete motor or sensory loss for the named peripheral nerves, such as the sural nerve.[12]

The decision of the Office of Workers' Compensation Programs dated April 14, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 1, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[9] *See* A.M.A., *Guides*, at 84-85, Table 64, which indicates that for tibial shaft fractures, 10 degrees of malalignment is the minimum ratable impairment using the diagnosis based method.

[10] A.M.A., *Guides*, at 78, Table 40.

[11] A.M.A., *Guides*, at 12.

[12] A.M.A., *Guides*, 88.