

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS RENKEN and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 00-1008; Submitted on the Record;
Issued March 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 22 percent permanent impairment of the left lower extremity for which he received a schedule award.

On March 24, 1998 appellant, then a 37-year-old mailhandler, was driving a forklift at work when a guardrail inside the trailer he was loading punctured his left foot. The Office of Workers' Compensation Programs accepted the claim for left foot crush injury with laceration, phalanx fracture of the fifth toe (proximal) and left ankle sprain. The Office authorized surgery on October 8, 1998. Appellant stopped work on March 24, 1998 and returned to limited duty on November 23, 1998. Appellant again stopped work from December 28, 1998 to January 2, 1999.

Appellant filed a claim for a schedule award on July 22, 1999. The Office advised appellant to have his physician review the statement of accepted facts and assess the extent of impairment to his lower extremity, based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

By decision dated November 22, 1999, the Office found that appellant had a 22 percent permanent impairment of his left lower extremity. Appellant received 63.36 weeks of compensation from September 1, 1999 to November 18, 2000.

The Board has reviewed the record and finds that appellant has no greater than a 22 percent impairment of his left lower extremity.

Section 8107 of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining

¹ 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.404 (1999).

permanent impairment from loss, or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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. The A.M.A., *Guides* (4th edition 1993) have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.³

In this case, the Office determined that appellant had a 22 percent permanent impairment of his left lower extremity based on a report and office note by Dr. G. James Sammarco, appellant's treating physician and orthopedist. In a June 24, 1999 report, Dr. Sammarco determined that appellant had reached maximum medical improvement and was released to participate in all activities. In a September 1, 1999 office note, he found that appellant had a functional range of motion of 10 degrees dorsal flexion and 10 degrees plantar flexion and slightly decreased subtalar motion. No other impairment was addressed.

In a report dated October 20, 1999, an Office medical adviser noted the physical findings from Dr. Sammarco's September 1, 1999 report and applied them to the fourth edition of the A.M.A., *Guides* for an impairment rating. He stated that appellant's range of motion of his left lower extremity was assessed, including his left fifth toe, left foot and ankle. The Office medical adviser determined that appellant's left ankle motion yielded 10 degrees of dorsiflexion and 10 degrees of plantar flexion, which according to Table 42, page 78 of the A.M.A., *Guides* equated to 7 and 15 percent impairments respectively. He determined that appellant had slightly decreased subtalar motion on inversion and eversion, which according to Table 43 on page 78, does not equate to a permanent impairment. The Office medical adviser concluded that, in accordance with Tables 42 and 43, page 78 of the A.M.A., *Guides*, appellant had a 22 percent permanent impairment of the left 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. Sammarco did not refer to the A.M.A., *Guides* in his report dated September 1, 1999; however, he did provide his physical findings, which included an evaluation of appellant's range of motion in his ankle and foot. Therefore, the Office medical adviser was proper in reviewing Dr. Sammarco's report and applying the A.M.A., *Guides* to his findings to determine an impairment rating. These medical reports support a 22 percent impairment of appellant's left lower extremity.

³ *Quincy E. Malone*, 31 ECAB 846 (1980).

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

The decision of the Office of Workers' Compensation Programs dated November 22, 1999 is hereby affirmed

Dated, Washington, DC
March 6, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member