

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY-ELLEN BINKLEY and DEPARTMENT OF THE ARMY,  
FORT INDIANTOWN GAP, Annville, PA

*Docket No. 00-1182; Submitted on the Record;  
Issued November 1, 2001*

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DECISION and ORDER

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

The issue is whether appellant has established entitlement to greater than a 34 percent schedule award for her right lower extremity.

The Board has duly reviewed the case record and concludes that appellant has no greater than a 34 percent permanent impairment of the right lower extremity.

On February 18, 1997 appellant, then a 45-year-old motor vehicle fleet manager, sustained a right ankle fracture while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for fracture of the tibia and fibula, as well as right ankle open reduction and internal fixation, flap graft and removal of plate and screws. By decision dated October 20, 1999, the Office granted appellant an award for a 34 percent permanent impairment for loss of use of the right lower extremity for the period May 22 to October 9, 1999 for a total of 97.92 weeks of compensation. By letter dated December 3, 1999, appellant requested reconsideration of the Office decision and submitted additional medical evidence in support of her request. In a decision dated January 4, 2000, the Office found the newly submitted evidence insufficient to modify the prior decision.

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.400<sup>2</sup> of the implementing federal regulations, 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 under the law for 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 American Medical Association, *Guides to the Evaluation of Permanent*

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.400.

*Impairment*<sup>3</sup> has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In a medical report dated February 25, 1999, appellant's treating physician stated that appellant had reached maximum medical improvement and was ready to be rated for a schedule award. Accordingly, the Office referred appellant to Dr. Robert W. Macht, a Board-certified surgeon, for the purposes of determining appellant's level of permanent impairment a comprehensive evaluation. In his reports dated May 25 and November 23, 1999, Dr. Macht found that appellant's right calf was 2 cm smaller than the left calf and that right ankle flexion was to 35 degrees, extension was to 5 degrees, inversion was to 15 degrees and eversion was to 10 degrees. He also noted appellant had Grade 4 weakness of dorsiflexion, inversion and eversion, that she walked with a moderate limp and that right knee flexion was limited to 110 degrees. Dr. Macht stated that in addition to her right ankle fracture, treated with open reduction, internal fixation and skin graft, appellant had a presumed diagnosis of chronic osteomyelitis without active drainage. Regarding appellant's subjective complaints of pain, he related that appellant's pain limited her ability to run, jump, kneel, squat, use ladders, go grocery shopping, dancing or bowling, that she had trouble with prolonged standing, walking and driving and was further limited in her ability to use stairs, get in and out of vehicles and have sexual relations. Using the A.M.A., *Guides* (4<sup>th</sup> ed. 1993), Dr. Macht found that appellant's Grade 4 weakness of dorsiflexion, inversion and eversion equated to a 22 percent permanent impairment of the right lower extremity, that her loss of range of ankle motion equated to a 9 percent lower extremity impairment, that her limited right knee flexion equated to a 10 percent impairment and that she had an additional 29 percent impairment for pain.

In reports dated July 13 and December 23, 1999, the Office medical consultant recommended an impairment rating of 34 percent. The consultant noted that pursuant to Table 39, page 77 of the A.M.A., *Guides*, Grade 4 weakness of ankle dorsiflexion, inversion and eversion, equated to 12, 5 and 5 percent impairments, respectively, which, when combined using the Combined Values Chart, as contemplated by the A.M.A., *Guides*, resulted in a total muscle weakness rating of 20 percent. The consultant further noted Dr. Macht's description of appellant's subjective complaints of pain, *i.e.*, as pain that may interfere with activity, described as constant and moderate, as Grade 3 as found in the A.M.A., *Guides*, and recommended that appellant receive the maximum allowable percentage for impairment due to loss of function due to pain, or five percent each for the sural and superficial nerves.<sup>4</sup> The Office medical adviser agreed with Dr. Macht's estimated 9 percent range of motion impairment for restricted ankle dorsiflexion, inversion and eversion, pursuant to Tables 42 and 43 on page 78 of the A.M.A., *Guides*, but noted that appellant's right knee flexion to 110 degrees did not entitle her to any additional impairment pursuant to Table 41, page 78. The Office medical adviser then used the Combined Values Chart and combined 20 percent for muscle weakness, 9 percent for loss of

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<sup>3</sup> A.M.A., *Guides*, (4<sup>th</sup> ed. 1993).

<sup>4</sup> The Board notes that the total percentage for pain calculated by the Office medical examiner, five percent impairment for each of the involved nerves, is actually slightly higher than that normally granted under the A.M.A., *Guides*. Pursuant to Tables 68 and 20, on pages 89 and 151 of the A.M.A., *Guides*, respectively, the maximum percentage allowable for impairment of the sural and superficial peroneal nerves is three percent for each nerve.

ankle motion and 5 percent each for the sural and superficial peroneal nerves to find a 34 percent right lower extremity impairment.

On October 20, 1999 the Office awarded appellant a 34 percent permanent impairment of the right lower extremity.

The Board finds that the Office properly relied on the recommendations of the Office medical consultant. While Dr. Macht advised that he also utilized the fourth edition of the A.M.A., *Guides* in determining that appellant's degree of impairment, his opinion is of diminished probative value as he did not refer to specific tables in calculating appellant's 29 percent impairment due to pain. Therefore, the Board finds that the Office permissibly followed the advice of its medical consultant in granting appellant a schedule award for a 34 percent permanent impairment of the right lower extremity.<sup>5</sup>

The January 4, 2000 and October 20, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.<sup>6</sup>

Dated, Washington, DC  
November 1, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>5</sup> 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. *Lena P. Huntley*, 46 ECAB 643 (1995).

<sup>6</sup> The Board notes that, together with her letter of appeal, appellant submitted additional medical evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952). However, the Board further notes that this evidence duplicates that already contained in the record.