

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHIRLEY M. GRANT and DEPARTMENT OF THE INTERIOR,  
NATIONAL PARK SERVICE, Glen Jean, WV

*Docket No. 01-760; Submitted on the Record;  
Issued November 26, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant is entitled to compensation for greater than 32 percent permanent impairment of her right great toe, for which she received a schedule award.

On May 10, 1999 appellant, then a 48-year-old park ranger, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that the shoes she was required to wear with her dress uniform caused the formation of bunions over an extended period of time on both feet. She stated that she was being treated for her right foot. Appellant further stated the date she first realized her condition was caused or aggravated by her employment was April 13, 1999.

The Office of Workers' Compensation Programs accepted appellant's claim for bunion of the right great toe on January 5, 2000. The Office also retroactively accepted appellant's bunionectionomy of the right great toe, which she underwent June 3, 1999.

By letter dated March 21, 2000, appellant requested a schedule award and compensation for periods of total and partial disability. Appellant requested the same in a second letter of April 24, 2000.

In a letter dated May 2, 2000, the Office advised appellant to have appellant's treating podiatrist, Dr. Martin M. Mrozek provide an impairment rating based upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed.).

In a report dated June 7, 2000, Dr. Mrozek provided the results of appellant's last physical examination. He stated that the first metatarsal phalangeal joint showed approximately 25 degrees of dorsal flexion. There was approximately eight degrees plantar flexion. The hallux was in a slightly dorsal flexed position upon neutral stances and weight bearing. Dr. Mrozek stated that applying the results of the examination to the formulas in the A.M.A., *Guides* there was a 17 percent impairment due to limited dorsal flexion and a 15 percent impairment due to the plantar flexion for a total impairment of 32 percent.

In a note dated June 21, 2000, the Office medical adviser stated that he concurred with Dr. Mrozek that appellant had a 32 percent impairment of the right great toe. He further advised that the date of maximum medical impairment was June 7, 2000, the date of Dr. Mrozek's opinion.

By letter dated July 24, 2000, the Office advised appellant that the medical report from Dr. Mrozek has been reviewed by the Office medical adviser who agrees that she has a 32 percent impairment of the right great toe. The Office requested that appellant submit a Form CA-7, claim for compensation, to receive her schedule award.

Appellant submitted a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) to the Office on August 15, 2000, in which she requested wage-loss compensation from June 3 to July 6, 1999 and a schedule award. Appellant also claimed her spouse as her dependent.

By decision dated December 20, 2000, the Office granted appellant a schedule award for a 32 percent impairment of the right great toe for a total of 12.16 weeks of compensation from June 7 through August 31, 2000.

The Board finds that appellant is not entitled to compensation for greater than 32 percent permanent impairment of her right great toe, for which she received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

The schedule award for a total loss of use of the foot runs for 205 weeks while the schedule award for the total loss of use of the great toe runs 38 weeks and the schedule award for the total loss of use of a toe other than the great toe runs 16 weeks.<sup>3</sup> When loss of a given member is partial, compensation is granted at a proportionate rate.<sup>4</sup>

In the present case, the Office accepted that appellant sustained a bunion of the right great toe and approved resulting surgery. In a medical report dated June 7, 2000, appellant's attending physician, Dr. Mrozek, stated that according to the standards of the A.M.A., *Guides* appellant had a 32 percent permanent impairment of her right great toe. The Office medical adviser

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> 5 U.S.C. § 8107(c)(4),(8),(11).

<sup>4</sup> 5 U.S.C. § 8107(c)(19).

reviewed Dr. Mrozek's medical report of June 7, 2000 and concurred with Dr. Mrozek that appellant had a 32 percent impairment of her right great toe.<sup>5</sup> He additionally concluded that the date of Dr. Mrozek's opinion was the date of maximum medical improvement. As the Office medical adviser found that Dr. Mrozek properly applied the A.M.A., *Guides* to appellant's examination findings, the Office properly utilized his report in granting appellant's schedule award. Moreover, as the medical records indicate that only appellant's right great toe was affected, appellant's schedule award was properly calculated at the proportionate rate for the loss of use of her great toe.

The December 20, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
November 26, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

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<sup>5</sup> See A.M.A., *Guides* (4<sup>th</sup> ed.), Table 45, p. 78.