

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PAUL J. POULIN and U.S. POSTAL SERVICE,  
POST OFFICE, Portland, ME

*Docket No. 01-2073; Submitted on the Record;  
Issued June 13, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for a schedule award for bilateral plantar fasciitis.

On April 9, 1998 appellant, then a 37-year-old part-time distribution clerk filed a claim alleging that he developed bilateral plantar fasciitis as a result of his employment duties. The Office accepted the claim for aggravation of bilateral plantar fasciitis and authorized surgery. Appellant stopped work on April 9, 1998 and returned on July 9, 1998.<sup>1</sup>

In support of his claim, appellant submitted records from Dr. William Dexter, a Board-certified family practitioner, dated April 9 to July 22, 1998. He diagnosed appellant with significant long-standing plantar fasciitis. Dr. Dexter indicated that this condition was causally related to his employment duties. He recommended that appellant work full-time limited duty.

On July 28, 1998 appellant filed a claim for recurrence of disability and indicated that on July 1, 1998 he experienced an aggravation of his bilateral foot condition. The Office accepted appellant's claim for recurrence and paid appropriate compensation.

The Office referred appellant for a second opinion evaluation to Dr. Richard L. Needleman, a Board-certified orthopedic surgeon. In a report dated August 27, 1998, he indicated that he reviewed the records provided and performed a physical examination of appellant. Dr. Needleman diagnosed appellant with bilateral plantar fasciitis of both feet including mid and proximal and noted that this was caused by appellant's employment duties. He noted that appellant was not disabled from regular work.

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<sup>1</sup> It appears from the record that the Office has accepted the following claims filed by appellant: aggravation of cervical spondylosis, claim No. 01-0376724; and aggravation of cervical thoracic arthritis, claim No. 01-037624. There is no evidence in the record that these cases were consolidated.

Thereafter, appellant submitted a report from Dr. Dexter dated November 13, 1998, which noted that appellant underwent injections of both feet and was progressing well. He noted a nodule on the right foot which caused tenderness. Dr. Dexter recommended various work restrictions.

The Office found a conflict in opinion between appellant's treating physician, Dr. Dexter, who determined appellant could return to work eight hours to a sedentary position and second opinion orthopedist, Dr. Needleman who indicated that appellant could return to full-time regular duty. On October 20, 1998 appellant was referred to an impartial medical examiner, Dr. John J. Padavano, an osteopath, to resolve the conflict of opinion.

In a report dated November 17, 1998, Dr. Padavano diagnosed appellant with bilateral plantar fasciitis. He indicated that this condition was caused by his employment duties including excess standing for prolonged periods which caused inflammation of the plantar fasciitis. Dr. Padavano noted that the findings upon physical examination showed no weakness on the toe and heel walk; no evidence of edema or deformity; full range of motion of the foot and ankle; minimal tenderness with palpation at the origin of the plantar fascia; and the Drawer's test was negative. He determined that appellant was not currently disabled from his regular duty as a result of the residual effects from the injury sustained on September 30, 1997. Dr. Padavano noted appellant could work full time, eight hours a day in his regular position with the employing establishment.<sup>2</sup>

On July 28, 2000 appellant filed a claim for recurrence of disability. He noted that on July 1, 2000 he experienced an aggravation of his bilateral foot condition. The Office accepted appellant's claim for recurrence and paid appropriate compensation.

On September 21, 2000 appellant filed a claim for a schedule award. He submitted a report from Dr. Dexter dated August 16, 1998, which provided work restrictions for appellant.

In a letter dated October 12, 2000, the Office requested Dr. Dexter to provide an assessment of appellant's permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*).

Dr. Dexter submitted two reports dated November 14 and December 8, 2000, which noted that appellant was responding well to the injections in his feet however he still experienced tenderness along his plantar fascia. He noted that the pain had not changed. Dr. Dexter recommended surgery. His November 9, 2000 report noted that the injections were very successful and that appellant was "80 percent improved." He noted that appellant still experienced pain in the morning and when he remained on his feet a long period of time. Dr. Dexter indicated that upon physical examination he noted two tender nodules along the

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<sup>2</sup> On December 23, 1998 the Office issued a notice of proposed termination of compensation on the grounds that Dr. Padavano's report dated November 17, 1998 established no continuing disability as a result of the September 30, 1997 employment injury. However, it appears from the record that the Office did not issue a final decision and, therefore, the Board does not have jurisdiction over the matter. See 20 C.F.R. § 501.2(c).

plantar fascia. He referred appellant to Dr. Susan P. Upham, a Board-certified family practitioner, for a permanent impairment rating.

In a report dated October 10, 2000, Dr. Upham noted that she evaluated appellant for permanent impairment in accordance with the A.M.A., *Guides*. She noted that upon physical examination of the right foot it revealed no tenderness of the arch, anterior aspect of the ankle or the lateral or medial malleolus; no edema or erythema or grinding with range of motion; no nodules were present; range of motion was 52 degrees flexion and 15 degrees for extension;<sup>3</sup> appellant noted his foot was painful after being on his feet greater than three hours; and noted a painful nodule. The left foot examination revealed tenderness of the heel extending to the proximal third of the sole of the foot; the left anterior, lateral and medial ankle was nontender; there was no edema, erythema or grinding; range of motion for plantar flexion was 35 degrees and extension was 22 degrees.<sup>4</sup> Dr. Upham noted that, regarding both feet, no evidence of muscle atrophy of the foot;<sup>5</sup> no inversion and eversion;<sup>6</sup> varus or valgus of the ankle;<sup>7</sup> and no hindfoot deformities.<sup>8</sup> She noted that she could not rate appellant's left plantar fasciitis as part of the impairment rating as he had not reached maximal medical improvement at that time. Dr. Upham noted that there was no category which qualified appellant for a permanent impairment rating. She noted that appellant did not exhibit gait derangement;<sup>9</sup> muscle atrophy;<sup>10</sup> muscle weakness;<sup>11</sup> decreased range of motion;<sup>12</sup> ankylosis;<sup>13</sup> arthritis;<sup>14</sup> amputations;<sup>15</sup> skin loss;<sup>16</sup> peripheral nerve injury;<sup>17</sup> causalgia<sup>18</sup> and vascular conditions.<sup>19</sup> Dr. Upham noted that

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<sup>3</sup> See A.M.A., *Guides* Table 42, page 78.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 37 and 38, page 77.

<sup>6</sup> *Id.* at 43, page 78.

<sup>7</sup> *Id.* at 44, page 78.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 36, page 76.

<sup>10</sup> *Id.* at 37 and 38, page 77.

<sup>11</sup> *Id.* at 39, page 77.

<sup>12</sup> *Id.* at 42-45, page 78.

<sup>13</sup> *Id.* at 55-59, page 80-81.

<sup>14</sup> *Id.* at 62, page 83.

<sup>15</sup> *Id.* at 63, page 83.

<sup>16</sup> *Id.* at 67, page 88.

<sup>17</sup> *Id.* at 68, page 89.

<sup>18</sup> *Id.* at page 56.

<sup>19</sup> *Id.* at 69, page 89.

appellant received zero percent impairment rating based on range of motion. She noted that there was no signs of arthritis on the x-rays and, therefore, concluded appellant had zero percent impairment based on the plantar fasciitis.

In a decision dated February 17, 2001, the Office denied appellant's claim for a schedule award on the grounds that Dr. Upham's report of October 10, 2000 indicated that appellant had not reached maximum medical improvement with respect to the left foot and determined appellant sustained zero percent permanent impairment of the right foot.

On March 23, 2001 appellant requested reconsideration of the schedule award denial dated February 17, 2001 and submitted additional medical evidence. He submitted various medical records most of which were duplicative and a new report from Dr. Dexter dated March 15, 2001 and an Occupational Safety and Health Administration publication. Dr. Dexter noted that appellant continued to experience pain on the bottom of his right foot. Appellant related that he felt a snap one week prior and experienced pain and swelling. He noted multiple significantly tender nodules with minimal tenderness; he had a full range of motion of the ankle, talar, subtalar, tarsal and metatarsal joints; with 5/5 strength in all muscle testing the lower leg, ankle, foot and toes; with no abnormalities on the x-rays. Dr. Dexter diagnosed appellant with a partial rupture of the plantar fascia and took appellant off work for several weeks.

In a decision dated June 25, 2001, the Office affirmed its decision dated February 17, 2001 on the grounds that the evidence submitted in support of the application was not sufficient to warrant modification of its prior decision.

The Board finds the Office properly denied appellant's claim for a schedule award for his bilateral plantar fasciitis.

The schedule award provisions of the Federal Employees' Compensation Act<sup>20</sup> and its implementing regulation<sup>21</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.

In a report dated October 10, 2000, Dr. Upham noted the left foot examination revealed tenderness of the heel extending to the proximal third of the sole of the foot; the range of motion for plantar flexion was 35 degrees and extension was 22 degrees for zero impairment.<sup>22</sup> She properly noted that she could not rate appellant's left plantar fasciitis as part of the impairment rating as appellant had not reached maximal medical improvement at that time. The Board notes

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<sup>20</sup> 5 U.S.C. § 8107.

<sup>21</sup> 20 C.F.R. § 10.404 (1999).

<sup>22</sup> See A.M.A., *Guides*, Table 42, page 78 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 537, Figure 17-11 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

that it is well established that a schedule award cannot be determined until a claimant has reached maximum medical improvement.<sup>23</sup>

Dr. Upham noted the physical examination of the right foot revealed no tenderness of the arch, anterior aspect of the ankle or the lateral or medial malleolus; no edema or erythema or grinding with range of motion; no nodules were present; range of motion was 52 degrees flexion and 15 degrees for extension for zero impairment;<sup>24</sup> appellant noted his foot was painful after being on his feet greater than three hours; and noted a painful nodule which was described at 2/10 in severity. She determined that there was no category which qualified appellant for a permanent impairment rating. Dr. Upham noted that appellant did not exhibit gait derangement;<sup>25</sup> muscle atrophy;<sup>26</sup> muscle weakness;<sup>27</sup> decreased range of motion;<sup>28</sup> ankylosis;<sup>29</sup> arthritis;<sup>30</sup> amputations;<sup>31</sup> skin loss;<sup>32</sup> peripheral nerve injury;<sup>33</sup> causalgia<sup>34</sup> and vascular conditions.<sup>35</sup> She further determined that appellant's complaints of pain were not ratable as she indicated that there was no category appellant qualified for an impairment rating. Dr. Upham therefore, determined appellant's impairment rating was zero percent.

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<sup>23</sup> See *Joseph R. Waples*, 44 ECAB 936 (1993).

<sup>24</sup> See A.M.A., *Guides* Table 42, page 78 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 537, Figure 17-11 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>25</sup> See Table 36, page 76 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 529, Figure 17-5 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>26</sup> See Table 37 and 38, page 77 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 530, Figure 17-6 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>27</sup> See Table 39, page 77 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 532, Figure 17-8 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>28</sup> See Table 42-45, page 78 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 537-538, Figure 17-11 to 17-14 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>29</sup> See Table 55-59, page 80-81 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 541, Figure 17-24 to 17-28 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>30</sup> See Table 62, page 83 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 544, Figure 17-31 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>31</sup> See Table 63, page 83 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 545, Figure 17-32 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>32</sup> See Table 67, page 88 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 550, Figure 17-36 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>33</sup> See Table 68, page 89 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 552, Figure 17-37 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>34</sup> See page 56 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 553 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

<sup>35</sup> See Table 69, page 89 (4<sup>th</sup> ed. 1993) (A.M.A., *Guides*); see also page 554, Figure 17-38 (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*).

The Board notes that Dr. Upham calculated appellant's schedule award based on the fourth edition of the A.M.A., *Guides*. The fifth edition of the A.M.A., *Guides*<sup>36</sup> became effective February 1, 2001 and, thereafter, the Office issued its June 25, 2001 decision. Upon review of both the fourth and fifth editions of the A.M.A., *Guides* the Board notes that there is no difference in the impairment rating in appellant's case.<sup>37</sup>

Dr. Upham determined that appellant had not reached maximum medical improvement with respect to his left foot and sustained a zero percent permanent impairment of the right foot. The Board finds that the Dr. Upham properly applied the A.M.A., *Guides* and reached an impairment rating of zero percent permanent impairment of the right foot. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has not sustained a permanent partial impairment of the right foot.

The decisions of the Office of Workers' Compensation Programs dated June 25 and February 17, 2001 are hereby affirmed.

Dated, Washington, DC  
June 13, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>36</sup> See FECA Bulletin 01-05 (issued January 31, 2001).

<sup>37</sup> *Supra* note 3-19.