

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE L. SCOGGINS and DEPARTMENT OF THE NAVY,
NAVAL AIR REWORK FACILITY, Jacksonville, FL

*Docket No. 02-1947; Submitted on the Record;
Issued January 7, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

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

On March 13, 2002 appellant, then a 49-year-old production controller, sustained a traumatic injury when he slipped and fell in soap and water on the bathroom floor at work. Appellant was treated at the naval hospital where x-rays of the right ankle confirmed a distal fibular fracture. Appellant was placed in a splint and referred to Dr. R. Stephen Lucie, a Board-certified orthopedic surgeon, at the Jacksonville Orthopedic Institute. Appellant underwent surgery at that time, including open reduction and internal fixation of the lateral malleolus. The Office of Workers' Compensation Programs accepted the claim for a right ankle fracture.

On June 20, 2002 appellant filed a Form CA-7 claim for a schedule award.

In a certification form dated June 26, 2002, Dr. Lucie noted that appellant had reached maximum medical improvement and rated his percentage of permanent impairment to body as a whole as two percent.

In a medical status report received by the Office on July 1, 2002, Dr. Ronald D. Hopkins indicated that appellant had reached maximum medical improvement of his right ankle on June 19, 2002. He also noted that appellant had two percent impairment under the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a report dated July 2, 2002, an Office medical adviser reviewed the medical record. He noted that appellant's claim had been accepted for a fractured right ankle and that the date of maximum medical improvement was June 19, 20002. The Office medical adviser stated that appellant had two percent permanent impairment based on his lateral malleolus fracture under the fifth edition of the A.M.A., *Guides*.

In a decision dated July 9, 2002, the Office issued a schedule award for two percent impairment of the right lower extremity. The period of the award was from June 19 to July 29, 2002.

The Board finds that appellant has no greater than a two percent permanent impairment of the right lower extremity for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing federal regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ 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.⁴

The Board notes that, on January 29, 2001, the Office announced that, effective February 1, 2001, all claims examiners and hearing representatives should begin utilizing the fifth edition of the A.M.A., *Guides*. This action was in accordance with the authority granted the Office under section 10.404 of the regulations.⁵ As the fifth edition is applicable to this claim, the impairment ratings offered by appellant's treating physicians under the fourth edition of the A.M.A., *Guides* are not reliable for schedule award purposes.

The Board finds, however, that the Office medical adviser properly relied on the diagnosis given by the treating physicians that included a lateral malleolus fracture of the right ankle and applied that diagnosis to Table 17-33, page 547 of the fifth edition of the A.M.A., *Guides* to find that appellant had a two percent impairment of the right lower extremity.⁶ Because the Office medical adviser's opinion is based on a proper application of the fifth edition of the A.M.A., *Guides*, and there is no evidence of record to contradict the Office medical adviser's rating, the Board concludes that appellant has no more than a two percent permanent impairment of the right lower extremity.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ 5 U.S.C. § 8107(c)(19).

⁴ See 20 C.F.R. § 10.404 (1999).

⁵ 20 C.F.R. § 10.404 (1999); see also FECA Bulletin No. 01-05.

⁶ See generally *Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of the A.M.A., *Guides*, the Office may follow the advise of its medical adviser if he or she has properly used the A.M.A., *Guides*).

The decision of the Office of Workers' Compensation Programs dated July 9, 2002 is hereby affirmed.

Dated, Washington, DC
January 7, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member