

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA L. GILKISON and DEPARTMENT OF VETERANS AFFAIRS,
CHILLICOTHE VETERANS HOSPITAL, Chillicothe, OH

*Docket No. 03-833; Submitted on the Record;
Issued July 21, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 10 percent permanent impairment of her right lower extremity for which she received a schedule award.

Appellant a 47-year-old housekeeping aide, sustained an aggravation of her right foot condition in March 1999. The Office of Workers' Compensation Programs accepted her claim for aggravation of right Achille's tendinitis.¹ Appellant underwent right foot surgery on April 13, 2000 and returned to her full duties on August 6, 2000.

On June 14, 2001 appellant filed a Form CA-2a, notice of recurrence, for complaints and pain in her right foot. She was placed off work by her attending physician on June 26, 2001 and underwent surgery on July 19, 2001. The Office developed the recurrence claim as a new claim. On September 25, 2001 the Office accepted her claim for a right torn Achille's tendon.² Appellant returned to work on January 7, 2002, as a program support assistant.

Appellant requested a schedule award on December 6, 2001. In April 2002, the Office began developing the issue of whether appellant had a permanent impairment of her right lower extremity by requesting information from appellant's attending physician, Dr. John F. Boyle, a podiatrist, who advised the Office that he did not perform evaluations to assess permanent impairment. Accordingly, the Office referred appellant for a second opinion evaluation.

In a report dated August 14, 2002, Dr. James H. Rutherford, a Board-certified orthopedic surgeon and Office referral physician, noted appellant's original injury in 2000, her medical treatment including surgical repair and that she had returned to her original position as a housekeeping aide without restrictions, but continued to wear a brace. Appellant's second injury and medical treatment were also noted, as well as the fact that she then returned to a sedentary

¹ File Number A9468617.

² File Number A92013249.

type job. Dr. Rutherford applied the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*³ (hereinafter A.M.A., *Guides*) to his findings on physical examination and opined that appellant had reached maximum medical improvement at the time of his evaluation of August 14, 2002. He opined that, under Table 17-6 of the A.M.A., *Guides*, appellant had a 10 percent permanent impairment of the right lower extremity, based on a 1 inch atrophy of the right calf compared to the left calf.⁴ Dr. Rutherford further stated that, under Table 17-11, appellant had 10 degrees of dorsiflexion of the right ankle, which equated to a 7 percent permanent impairment of the right lower extremity.⁵ He stated, however, that Table 17-2 of the A.M.A., *Guides* precluded combination of values for loss of range of motion and atrophy⁶ and concluded that appellant had a 10 percent permanent impairment of the right lower extremity.

An Office medical adviser reviewed Dr. Rutherford's report on October 2, 2002 and applied the fifth edition of the A.M.A., *Guides*. Applying Table 17-6, he noted that a 1 inch atrophy of calf muscles equated to a 10 percent lower extremity impairment⁷ and that under Table 17-11, dorsiflexion of the right ankle to 10 degrees equated to a 7 percent lower extremity impairment.⁸ The Office medical adviser found that, as provided in Table 17-2, the impairment, due to the restricted range of motion, could not be combined with impairment due to muscle atrophy,⁹ appellant's total impairment of the right lower extremity was 10 percent.

By decision dated November 5, 2002, the Office granted appellant a schedule award for 10 percent permanent loss of use of her right lower extremity, for a total of 28.8 weeks of compensation, to run from August 14, 2002 to March 3, 2003.

The Board finds that appellant has no more than a 10 percent permanent impairment of her right lower extremity for which she received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹⁰ and its implementing regulation¹¹ 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

³ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁴ A.M.A., *Guides*, 530, Table 17-6.

⁵ A.M.A., *Guides*, 537, Table 17-11.

⁶ A.M.A., *Guides*, 526, Table 17-2.

⁷ See *supra* note 4.

⁸ See *supra* note 5.

⁹ See *supra* note 6.

¹⁰ 5 U.S.C. § 8107.

¹¹ 20 C.F.R. § 10.404 (1999).

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.¹²

In this case, the Office granted appellant a schedule award for a 10 percent permanent impairment of her right lower extremity. The Office medical adviser reviewed Dr. Rutherford's report of August 14, 2002 and agreed that appellant's findings resulted in an impairment rating of 10 percent of the right lower extremity under the fifth edition of the A.M.A., *Guides*, as Table 17-2 provides that an impairment due to the restricted range of motion cannot be combined with impairment due to muscle atrophy.¹³

There is no medical evidence in the record establishing that appellant has more than a 10 percent impairment of her right lower extremity. Therefore, the Board finds that appellant has no more than a 10 percent impairment of her right lower extremity.

On appeal, appellant argues that she would like to be compensated for the emotional stress incurred as a result of her injury. However, as there is no final decision from the Office for the Board to review on this issue, the Board has no jurisdiction to review this matter.¹⁴

¹² *Id.*

¹³ *See supra* note 6.

¹⁴ *See* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting a new claim to the Office.

The November 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 21, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member