

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GLORIA J. KANTOR and DEPARTMENT OF DEFENSE,  
DEFENSE FINANCE & ACCOUNTING SERVICE, Cleveland, OH

*Docket No. 03-921; Submitted on the Record;  
Issued July 21, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has more than a 29 percent permanent impairment of the right lower extremity for which she received a schedule award; and (2) whether she sustained an injury to her left foot causally related to her federal employment.

On February 19, 1996 appellant, then a 49-year-old accounting technician, filed an occupational disease claim alleging that she sustained an injury to her right foot due to walking and standing at work. She was totally disabled from January 30 to March 30, 1996 and returned to work with restrictions of limited movement and standing. Appellant retired on February 28, 1997.

In a report dated April 23, 1996, Dr. Christopher L. Tisdell, appellant's attending orthopedic surgeon, diagnosed diabetic neuropathy of the right foot and opined that the walking, standing, carrying and lifting required in her job caused or aggravated her condition.

On June 12, 1996 the Office of Workers' Compensation Programs accepted appellant's claim for midfoot neuroarthropathy of the right foot (Charcot's diabetic midfoot deformity).

On May 29, 1997 appellant filed a claim for a schedule award.

Dr. Tisdell indicated in a report dated October 10, 1997 that appellant had a 100 percent permanent impairment and an 80 percent permanent impairment of the right and left lower extremities, respectively.

In a narrative report dated August 7, 1998, Dr. Sheldon Kaffen, an orthopedic surgeon and an Office referral physician, provided findings on examination and determined that appellant had a 12 percent permanent impairment of the right lower extremity causally related to her employment due to a mild hindfoot deformity and no work-related permanent impairment of the left lower extremity. He noted that there was no evidence by physical examination or x-ray that

appellant had Charcot's neuroarthropathy of the left foot or any other work-related left foot condition.

An Office medical adviser determined on September 1, 1998 that appellant had a 27 percent permanent impairment of the right lower extremity based on Dr. Kaffen's findings on examination and the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

By decision dated January 12, 1999, the Office granted appellant a schedule award for a 27 percent permanent impairment of the right lower extremity and a 0 percent permanent impairment of the left lower extremity resulting from the accepted condition of bilateral midfoot neuroarthropathy.

By letter dated January 22, 1999, through her attorney, appellant requested a hearing.

In a report dated January 10, 1997, received by the Office on March 1, 1999, Dr. Tisdell indicated that appellant had a Charcot's deformity of the left foot.

On June 8, 1999 a hearing was held before an Office hearing representative at which appellant testified.

By decision dated August 26, 1999, an Office hearing representative remanded the case for further development of the evidence as to the degree of permanent impairment of appellant's lower extremities.

In a report dated October 12, 1999, Dr. Alan H. Wilde, an orthopedic specialist and an Office referral physician, determined that appellant's neuropathy in both lower extremities was related to her diabetes and not the physical requirements of her employment.

Due to the conflict in the medical opinion evidence between Dr. Tisdell and Dr. Wilde, the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Kenneth W. Chapman, a Board-certified orthopedic surgeon acting as an impartial medical specialist, in order to resolve the conflict.

In a report dated December 6, 2001, Dr. Chapman provided a history of appellant's condition and detailed findings on examination. He stated that appellant had a severe problem with both legs secondary to Charcot's arthropathy and the abnormal nerve sensation secondary to her diabetes. Dr. Chapman stated that appellant's Charcot's arthropathy would have developed and progressed regardless of her job but that her job did aggravate her accepted right leg midfoot neuroarthropathy. He stated that appellant's left foot deformity was caused by her nonwork-related diabetic neuropathy.

An Office medical adviser determined in a report dated January 23, 2002 that appellant had a 29 percent permanent impairment of the right lower extremity based on Dr. Chapman's findings on examination and the A.M.A., *Guides*.

By decision dated February 14, 2002, the Office found that the weight of the medical evidence, represented by the opinion of Dr. Chapman, established that appellant had no work-related permanent impairment of the left lower extremity.

By decision also dated February 14, 2002, the Office granted appellant a schedule award an additional 2 percent impairment of the right lower extremity which, when combined with the prior schedule award of 27 percent, totaled 29 percent for the right lower extremity.

By letter dated March 14, 2002, appellant requested a hearing. On October 24, 2002 a hearing was held and appellant testified.

By decision dated and finalized February 4, 2003, an Office hearing representative affirmed the Office's February 14, 2002 decisions.

The Board finds that appellant has no more than a 29 percent impairment of the right lower extremity.

The schedule award provisions 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

In this case, the Office properly determined that there was a conflict in the medical opinion evidence between Dr. Tisdell, appellant's attending physician, and Dr. Wilde, the Office referral physician, as to the degree of appellant's work-related permanent impairment to her right foot and whether her left foot condition was causally related to her employment. Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>3</sup>

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> 5 U.S.C. § 8123(a); see also *Raymond A. Fondots*, 53 ECAB \_\_\_\_ (Docket No. 01-1599, issued June 26, 2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207, 210 (1993).

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>4</sup>

In a report dated December 6, 2001, Dr. Chapman provided a history of appellant's condition and detailed findings on examination. He stated that appellant had a severe problem with both legs secondary to Charcot's arthropathy and the abnormal nerve sensation secondary to her diabetes. Dr. Chapman stated that appellant's Charcot's arthropathy would have developed and progressed regardless of appellant's job but that her job did aggravate her accepted right leg midfoot neuroarthropathy. He stated that appellant's left foot deformity was not work related.

In a report dated January 23, 2002, an Office medical adviser applied the findings in Dr. Chapman's report and correctly determined that appellant had a 7 percent permanent impairment due to a hindfoot fracture with valgus angulation between 10 and 19 degrees, a 10 percent impairment due to a moderate midfoot rocker bottom deformity, and a 17 percent impairment of the forefoot that included 10 percent for a fracture of the first metatarsal with loss of weight transfer, 5 percent for the fifth metatarsal, and 2 percent for the remainder of the metatarsals, according to Table 17-33 at page 547 of the fifth edition of the A.M.A., *Guides*. The Office medical adviser then correctly combined the impairment percentages by means of the Combined Values Chart at page 604 and found a 29 percent permanent impairment of the right lower extremity. As the Office medical adviser's report provided the only evaluation that conformed to the A.M.A., *Guides*, it constitutes the weight of the medical evidence.<sup>5</sup>

The Board further finds that appellant had no injury to her left foot causally related to her employment.

As noted above, Dr. Chapman, the impartial medical specialist selected to resolve the conflict in the medical opinion evidence, indicated that appellant's left foot deformity was related to her diabetic neuropathy and was not caused or aggravated by her employment. He was provided with the case record and a statement of accepted facts and his opinion that appellant's left leg condition was not employment related was based upon a complete and accurate factual background and explained with medical rationale. The weight of the medical evidence rests with the opinion of Dr. Chapman who opined that appellant's left foot condition was not work related.

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<sup>4</sup> See *Roger Dingess*, 47 ECAB 123, 126 (1995); *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986).

<sup>5</sup> See *Michael C. Norman*, 42 ECAB 768 (1991); *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

The decision of the Office of Workers' Compensation Programs dated February 4, 2003 is affirmed.

Dated, Washington, DC  
July 21, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member