

_____	)	
<b>WILLIE BYRD, JR., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 03-2211</b>
	)	<b>Issued: February 26, 2004</b>
<b>U.S. POSTAL SERVICE, MAIN POST OFFICE,</b>	)	
<b>Birmingham, AL, Employer</b>	)	
	)	
_____	)	

*Case Submitted on the Record*

Before:  
ALEC J. KOROMILAS, Chairman  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

On September 5, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated March 12, 2003 denying his claim for a schedule award. Pursuant to 20 C.F.R. §§ 10.501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue.

The issue is whether appellant is entitled to a schedule award for permanent impairment due to his accepted bilateral foot condition.

On August 24, 1998 appellant, then a 41-year-old mail handler, filed an occupational disease claim alleging that he sustained an injury to his feet, back and shoulder due to factors of his employment. The Office accepted his claim for bilateral plantar fasciitis. Appellant subsequently filed a claim for a schedule award.

The Office initially denied appellant's schedule award claim in a July 5, 2000 decision. Appellant requested an oral hearing that was held on February 22, 2001. By decision dated July 17, 2001, the Office hearing representative remanded the case for further development.<sup>1</sup>

In a report dated November 28, 2001, Dr. Thomas E. Powell, a Board-certified orthopedic specialist and an Office referral physician, provided a history of appellant's condition and findings on examination. He stated that appellant's work-related plantar fasciitis was a transient condition which had resolved and he had no permanent impairment due to the employment injury. He noted that appellant had diabetes and diagnosed diabetic neuropathy.

By decision dated February 12, 2002, the Office denied appellant's schedule award claim on the grounds that the weight of the medical opinion evidence was represented by the report of Dr. Powell and established that appellant had no permanent impairment of his feet causally related to his employment injury.

Appellant requested an oral hearing that was held on September 23, 2002. In a September 13, 2002 report, Dr. Willie D. Askew, appellant's attending Board-certified internist, provided a history of his condition and findings on examination. He opined that appellant was permanently disabled and impaired due to bilateral plantar fasciitis with multiple plantar fibromas. He noted that surgery was not recommended due to appellant's diabetes.

By decision dated and finalized December 17, 2002, an Office hearing representative found an unresolved conflict in the medical evidence between Dr. Askew and Dr. Powell and remanded the case for an impartial medical examination.

On January 23, 2003 the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. George S. Buckner, a Board-certified orthopedic surgeon selected as the impartial medical specialist, for an examination and evaluation in order to resolve the conflict in the medical evidence.

In a report dated February 14, 2003, Dr. Buckner provided a history of appellant's condition and findings on examination. He diagnosed chronic plantar fasciitis and stated:

"On examination [appellant] walks with a slow gait. He uses a cane in his left hand but can walk without it. The SLR [straight leg raise] [test] is negative to 80 degrees in the sitting position bilaterally. [Appellant] has no obvious swelling in his feet. He has tenderness along the plantar fascia from its attachment to the calcaneus out to the metatarsal head areas. He has some small plantar fibromas ... bilaterally.<sup>2</sup> His ankle motion is 20 degrees of dorsiflexion, 40 degrees of plantar flexion, 20 degrees of inversion and 20 degrees of eversion. His toes have active dorsiflexion to 20 and plantar flexion to 20. The motor exam[ination] reveals 4 of 5 strengths in dorsiflexion and plantar flexion of the feet and toes

---

<sup>1</sup> The hearing representative directed the Office to refer appellant for an independent medical examination. However, the Office referred appellant to another Office referral physician.

<sup>2</sup> Dr. Buckner indicated that this condition was not causally related to appellant's employment injury.

with some giving way. The sensory exam[ination] reveals no loss in either foot. The deep tendon reflexes are 2 to 3+ knee jerk and 2+ ankle jerks bilaterally.”

\* \* \*

“[Appellant’s] pain-related impairment score of 45.81 would be in the moderately severe impairment range; however, he has a global pain behavior rating of –5 and a credibility rating of –5, which would call into question the validity of the pain impairment scores. I therefore consider [appellant’s] impairment unratable from a pain impairment standpoint. In addition, I could find no ratable impairment using anatomic, functional, or diagnosis-related models.

“This evaluation was done using the criteria and methods from the A[merican] M[edical] A[ssociation], *Guides to the Evaluation of Permanent Impairment*, 5<sup>th</sup> edition.”

By decision dated March 12, 2003, the Office denied appellant’s claim for a schedule award on the grounds that the weight of the medical evidence, as represented by the report of the impartial medical specialist, Dr. Buckner, established that he had no permanent impairment due to his accepted bilateral foot condition.

### **LEGAL PRECEDENT**

The schedule award provisions of the Federal Employees’ Compensation Act<sup>3</sup> and its implementing regulation<sup>4</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.<sup>5</sup>

Section 8123(a) of the 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>6</sup>

---

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.*

<sup>6</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>7</sup>

### **ANALYSIS**

In a report dated February 14, 2003, Dr. Buckner indicated that he would base an impairment rating on appellant's pain because he found no other basis for a rating. He stated, "I could find no ratable impairment using anatomic, functional or diagnosis-related models." Dr. Buckner indicated that his physical examination of appellant brought into question the credibility of appellant's complaints of pain and, therefore, the validity of the pain impairment scores. He concluded that appellant's impairment was unratable from a pain impairment standpoint. However, it appears that appellant may have some impairment due to loss of range of motion. Dr. Buckner indicated that appellant had 20 degrees of inversion of the ankle. According to Table 43 at page 78 of the A.M.A., *Guides*, this measurement would equal a mild (two percent) impairment of the lower extremity (three percent impairment of the foot). Due to this deficiency, Dr. Buckner's opinion requires further clarification. It is well established that when the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in medical opinion and such opinion requires clarification or elaboration, the Office has the responsibility to secure a supplemental report to cure the defect in the original report.<sup>8</sup>

### **CONCLUSION**

The Board finds that the opinion of Dr. Buckner, the impartial medical specialist, requires clarification as to any permanent impairment of appellant's feet. Upon return of the case record, the Office should request a supplemental medical opinion from Dr. Buckner of any impairment with specific reference to the appropriate sections of the fifth edition of the A.M.A., *Guides*.

---

<sup>7</sup> *Roger Dingess*, 47 ECAB 123 (1995); *Juanita H. Christoph*, 40 ECAB 354 (1988).

<sup>8</sup> *See Roger W. Griffith*, 51 ECAB 491 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 12, 2003 is set aside and the case is remanded for further development consistent with this decision.

Issued: February 26, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member