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BEATRICE L. HIGH, Appellant)	
)	
and)	Docket No. 05-1980
)	Issued: January 18, 2006
U.S. POSTAL SERVICE, POST OFFICE,)	
Cinnaminson, NJ, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

On December 11, 2000 appellant, a 58-year-old clerk-dispatcher, filed a traumatic injury claim alleging that she injured her left ankle when a bulk mail center container rolled on her foot. The Office accepted the claim for left ankle sprain. Appellant returned to full duty on April 18, 2001.

Appellant filed a claim for a schedule award on August 8, 2001.

On November 21, 2002 the Office received an August 27, 2002 report by Dr. David Weiss, an osteopath, who provided a history of appellant's left lower extremity condition and findings on physical examination. He diagnosed left ankle chronic contusion and sprain, aggravation of preexisting left ankle pathology, left ankle post-traumatic osteoarthritis and status post removal of painful retained hardware due to the December 11, 2000 employment injury. Dr. Weiss indicated that appellant had left ankle pain, stiffness and increased pain with weather changes. He stated:

"Left ankle: Reveals two well-healed surgical scars over the lateral malleolus. The first measures approximately eight cm [centimeters] in length. The second scar, proximal, measures three cm at the base of the lateral malleolus. There is exquisite tenderness over the lateral cuneiform bone. Dorsiflexion, plantar flexion, eversion and inversion ranges of motion are carried with pain at the extremes. Motor strength testing is 4/5 involving eversion and 3/4 involving inversion. Manual muscle testing of the gastrocnemius musculature is grade at 4/5. Deep tendon reflexes are decreased on the left."

Dr. Weiss calculated a 34 percent impairment of appellant's left lower extremity, based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ which included 12 percent for inversion of the left ankle motor strength deficit, based on Table 17-8 at page 532, 5 percent eversion of the left ankle motor strength deficit, based on Table 17-8 at page 532, 17 percent left ankle plantar flexion motor strength deficit, based on Figure 17-8 at page 532 and 3 percent for pain-related impairment, based on Figure 18-1 at page 574 of Chapter 18.

After reviewing the report of Dr. Weiss, an Office medical adviser disagreed with the impairment rating for left ankle plantar flexion. The Office medical adviser stated that he did not "understand how isolated testing of the muscle revealed only 4/5 strength" and that "it is difficult to isolate the gastroc from the other [p]lantar [f]lexor." He indicated that appellant had a 12 percent inversion of the left ankle motor strength deficit, based on Table 17-8 at page 532, 5 percent eversion of the left ankle motor strength deficit, based on Table 17-8 at page 532 and a 3 percent for pain-related impairment, based on Figure 18-1 at page 574 of Chapter 18.

By decision dated December 6, 2002, the Office granted appellant a schedule award for a 20 percent impairment of the left lower extremity for the period April 18, 2001 to May 26, 2002 or 57.6 weeks.

Appellant requested a hearing that was held on September 23, 2003. At the hearing, counsel submitted a September 16, 2003 report by Dr. Weiss. In response to the Office medical adviser's report, he amended his report to find a 17 percent impairment due to 4/5 motor strength deficit, gastrocnemius (ankle plantar flexion) based on Table 17-8, page 532.

¹ A.M.A., *Guides* (5th ed. 2001).

In a decision dated November 25, 2003, the Office hearing representative found that Dr. Weiss' supplemental report did not adequately address the Office medical adviser's concerns, but warranted further development of the medical evidence regarding isolating the gastrocnemius from the other plantar flexions and whether appellant had greater than a 20 percent impairment of the left lower extremity.

On remand the Office referred appellant to Dr. Marc L. Kahn, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the extent of her left lower extremity impairment. In a report dated March 22, 2004, he diagnosed left ankle contusion/sprain. A physical examination revealed full plantar flexion, inversion and eversion and dorsiflexion to neutral. Dr. Kahn also found "some tenderness at the tips of the malleoli bilaterally" and "no effusion, ecchymosis or edema." With regard to appellant's osteoarthritis, Dr. Kahn determined that this was unrelated to the accepted employment injury and that "[i]t was appropriate to remove the hardware." He concluded that appellant had a five percent impairment of the left lower extremity using the A.M.A., *Guides* (5th ed.). Dr. Kahn did not include her arthritis as he found it was "not ratable as it was preexisting" and that "[h]er loss of motion is not ratable as that was preexisting as well due to the arthritis."

By decision dated May 14, 2004, the Office found that appellant did not have more than a 20 percent impairment of the left lower extremity. It relied upon the March 22, 2004 report by Dr. Kahn, which concluded that she had only a five percent impairment.

In a letter dated May 20, 2004, appellant's counsel requested an oral hearing, which was held on February 14, 2005. By decision dated May 11, 2005, an Office hearing representative affirmed the May 14, 2004 decision which found that appellant was not entitled to an additional schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ sets 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.⁴ Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁵

² 5 U.S.C. §§ 8101-8193, § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.*

⁵ FECA Bulletin No. 01-05 (issued January 29, 2001); see *Jesse Mendoza*, 54 ECAB ____ (Docket No. 03-1516, issued September 10, 2003).

It is well established that, in determining the amount of the schedule award for a member of the body that sustained an employment-related impairment, preexisting impairments are to be included in the evaluation of permanent impairment.⁶

ANALYSIS

The Board finds that the Office erred in relying upon the impairment rating by Dr. Khan. His report of March 22, 2004 which determined appellant's lower extremity impairment as five percent, failed to explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.⁷ Dr. Kahn merely advised that she had a five percent impairment of the left lower extremity as a result of the work-related injury. He failed to refer to any specific tables or charts in the A.M.A., *Guides* or to provide his calculations in support of this determination.

The Board notes that, in determining entitlement to a schedule award, preexisting impairment to the scheduled member is to be included.⁸ The Office procedure manual provides that, in evaluating the loss of use of a scheduled member due to an employment injury, the percentage includes both employment-related impairments and any preexisting impairment of the same member or function.⁹ Dr. Kahn noted appellant's preexisting arthritis and loss of motion due to the arthritis but concluded that it should not be included in the determination of her impairment rating.

In view of Dr. Kahn's failure to adequately explain how his impairment rating was reached in accordance with the relevant standards of the A.M.A., *Guides* and the fact that he failed to include appellant's preexisting arthritis and loss of motion due to the arthritis in his impairment rating, the case requires further development to determine the extent of impairment appellant's left lower extremity.

On remand, the Office should further develop the medical evidence and obtain an opinion on appellant's impairment of the left lower extremity that conforms to the Office's procedures and the A.M.A., *Guides*. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's schedule award claim.

CONCLUSION

The Board finds that the case is not in posture for decision and will be remanded for further development of the medical evidence. After such further development as the Office deems necessary, it should issue an appropriate decision.

⁶ See *Eleanor E. Smith*, 53 ECAB 292 (2002); *Lela M. Shaw*, 51 ECAB 372 (2000).

⁷ See *Tonya D.. Bell*, 43 ECAB 845 (1992).

⁸ *Michael C. Milner*, 53 ECAB 446 (2002); *Lela M. Shaw*, *supra* note 6.

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(3) (June 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 11, 2005 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: January 18, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board