United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 06-1178**
	)	**Issued: October 25, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Spring Mills, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 17, 2006 appellant, through her attorney, filed a timely appeal from the April 3, 2006 merit decision of the Office of Workers' Compensation Programs, finding a 10 percent impairment to the right lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUE

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

FACTUAL HISTORY

This case has previously been on appeal before the Board. In a June 22, 2005 decision, the Board affirmed an Office hearing representative's November 26, 2004 decision which found that appellant did not sustain a recurrence of total disability from June 13 through July 8, 2003

causally related to her January 7, 2003 employment injuries.[1] The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.[2]

On December 15, 2005 appellant filed a claim for a schedule award. By letter dated January 4, 2006, the Office requested that she submit a medical opinion which assessed the extent of any permanent impairment of the right ankle due to the January 7, 2003 employment injury based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). The Office advised appellant that the medical opinion should also address whether she had reached maximum medical improvement.

In a January 16, 2006 medical report, Dr. James J. Sullivan, a Board-certified physiatrist, provided a history of appellant's January 7, 2003 employment injury, medical treatment and social background. He noted that she developed post-traumatic arthritis of the right ankle with pain, swelling, numbness and gait deviations. Dr. Sullivan listed appellant's complaint of pain in the right knee, her functional status and reviewed appellant's medical records. On physical examination, Dr. Sullivan reported a wide-based gait with a moderate limp. Appellant's right leg was externally rotated and she had reduced knee flexion. Her calf circumferences were 44 centimeters on the left and 42 centimeters on the right. Dr. Sullivan stated that manual muscle testing of the lower extremity was 5/5 throughout with reduced right ankle dorsiflexion (extension) and plantar flexion. Right knee flexion was 115 degrees and extension was 0 degrees. Right ankle dorsiflexion was -5 degrees and plantar flexion was 113 degrees which represented 23 degrees past the 90-degree mark. Right ankle inversion was 12 degrees and eversion was 0 degrees actively. Dr. Sullivan stated that, at the neutral position, appellant had 0 degrees of right ankle inversion and eversion. He diagnosed ambulation dysfunction secondary to a displaced bi-malleolar right ankle fracture secondary to the January 7, 2003 employment injuries. Dr. Sullivan noted that appellant was status post right ankle surgeries performed on January 8 and October 17, 2003 and December 23, 2004. He also diagnosed post-traumatic osteoarthritis of the right ankle, right ankle pain and edema with prolonged standing activities and gait deviations including wide-based gait with a moderate limp, external rotation and reduced flexion of the right lower extremity. Dr. Sullivan found that appellant was obese with a body mass index of 36.5. He ruled out right peroneal sensory neuropathy.

Utilizing the A.M.A., *Guides,* page 541, Dr. Sullivan stated that the optimal ankylosis position was the neutral position without flexion, extension, varus or valgus. He determined that ankylosis of the ankle in the neutral position constituted a 10 percent impairment of the lower extremity and a 14 percent impairment of the foot. Dr. Sullivan further determined that 5 degrees of plantar flexion of the right ankle did not meet the criteria for ankle impairment due

[1] Docket No. 05-384 (issued June 22, 2004).

[2] On January 9, 2003 appellant, then a 43-year-old rural carrier associate, filed a traumatic injury claim alleging that on January 7, 2003 she fractured and dislocated her right ankle when she slipped on icy stairs. The Office accepted appellant's claim for bilateral fracture of the right ankle, traumatic arthropathy of the right foot and ankle, and loose body in the joint, ankle or foot. The Office also authorized surgery which appellant underwent on January 8 and October 17, 2003 and December 23, 2004. On June 17, 2003 appellant filed a claim alleging that she sustained a recurrence of disability beginning June 13, 2003. By decision dated September 18, 2003, the Office found that appellant did not sustain a recurrence of disability beginning June 13, 2003 causally related to her accepted employment injuries.

to ankylosis in plantar flexion or dorsiflexion based on the A.M.A., *Guides*, page 541, Table 17-24. He found that inversion and eversion positioning of appellant's ankylosed right ankle was in a neutral position without varus or valgus malalignment. Dr. Sullivan concluded that appellant sustained a 10 percent impairment of the right lower extremity.

On March 27, 2006 Dr. Morley Slutsky, an Office medical consultant, reviewed Dr. Sullivan's January 16, 2006 report. He found that plantar flexion of 23 degrees, -5 degrees of dorsiflexion, 12 degrees of inversion and 0 degrees of eversion of the right ankle actively and that at the neutral position she had 0 degrees of right ankle inversion and eversion. Dr. Slutsky concluded that this did not constitute an impairment based on the A.M.A., *Guides* 537, Tables 17-11 and 17-12. He determined that ankylosis of the ankle in a neutral position constituted a 10 percent impairment of the right lower extremity. Dr. Slutsky agreed that appellant sustained a 10 percent impairment of the right lower extremity.

By decision dated April 3, 2006, the Office granted appellant a schedule award for a 10 percent impairment of the right lower extremity.[3]

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulation[5] sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[6] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[7]

FECA Bulletin No. 01-5 provides that, in making an impairment rating for the lower extremities, different evaluation methods cannot be used in combination. For example, arthritis impairments obtained from Table 17-31 cannot be combined with impairment determinations based on gait derangement (Table 17-5); muscle atrophy (Table 17-6); muscle strength (Tables 17-7 and 17-8) or range of motion loss (section 17.2f). Before finalizing any physical

[3] Following the Office's April 3, 2006 decision, the Office received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. Section 8128; 20 C.F.R. § 10.606.

[4] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[5] 20 C.F.R. § 10.404.

[6] 5 U.S.C. § 8107(c)(19).

[7] 20 C.F.R. § 10.404.

impairment calculation, the Office medical adviser is to verify the appropriateness of the combination of evaluation methods with that listed in Table 17-2, the cross-usage chart.[8]

ANALYSIS

On appeal appellant contends that she has more than a 10 percent impairment of the right lower extremity due to additional diagnoses made by Dr. Sullivan, an attending physician, which included an abnormal gait, a right calf circumference that was two millimeters smaller than the left calf, post-traumatic osteoarthritis and diminished external rotation and reduced flexion of the right knee. The A.M.A., *Guides* at Table 17-2, the cross-usage chart provides that if the evaluator uses the arthritis analysis then the evaluator cannot also use the loss of muscle atrophy, muscle strength, range of motion and ankylosis loss, gait derangement analysis or the diagnostic based estimates.[9] Under the A.M.A., *Guides* 530, Table 17-6, a difference in calf circumference of 0 to 0.9 centimeters represents no impairment of the lower extremity.

The Board finds that Dr. Sullivan properly determined that appellant sustained a 10 percent permanent impairment of the right lower extremity. This was based on his findings that an ankylosed ankle in the neutral position constituted a 10 percent impairment of the lower extremity and that 115 degrees of flexion and 0 degrees of extension of the right knee and -5 degrees of dorsiflexion, 113 degrees of flexion, 23 degrees of inversion and 0 degrees of eversion of the right ankle constituted a 0 percent impairment.

Dr. Slutsky, an Office medical adviser, reviewed Dr. Sullivan's report and agreed in the impairment rating. He noted that 23 degrees of plantar flexion, -5 degrees of dorsiflexion, 12 degrees of inversion and 0 degrees of eversion did not constitute an impairment based on the A.M.A., *Guides* 537, Tables 17-11 and 17-12. Dr. Slutsky also determined that ankylosis of the ankle in a neutral position constituted a 10 percent impairment of the right lower extremity. Dr. Sullivan and the Office medical adviser provided reasoned opinions that appellant has a 10 percent impairment of her right lower extremity under the A.M.A., *Guides*.

CONCLUSION

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

[8] *See* FECA Bulletin No. 01-5 (issued January 29, 2001); *see also* A.M.A., *Guides* 526, Table 17-2 (5th ed. 2001).

[9] A.M.A., *Guides*, *supra* note 8 at 534.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board