United States Department of Labor
Employees' Compensation Appeals Board

D.P., Appellant	)	
and	)	**Docket No. 06-1890**
	)	**Issued: March 9, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, 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:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2006 appellant timely appealed the Office of Workers' Compensation Programs' July 28, 2006 merit decision regarding her entitlement to schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established more than a 12 percent impairment of her right lower extremity for which she received a schedule award.

FACTUAL HISTORY

On April 7, 2001 appellant, then a 38-year-old mail carrier, filed a traumatic injury claim alleging that on April 5, 2001 she sustained multiple injuries when she was hit by a truck while in the performance of her federal duties. The Office accepted the claim for a right tibia/fibula fracture and paid appropriate compensation. Appellant stopped work on April 5, 2001 and returned to light-duty work four hours a day on August 27, 2001. She eventually resumed an

eight-hour-a-day light-duty status. The Office accepted a claim for recurrent disability as of August 2, 2004.

On May 6, 2004 appellant filed a claim for a schedule award. In a November 5, 2003 report, Dr. George Rodriguez, a Board-certified specialist in physical medicine and rehabilitation, reported that she reached maximum medical improvement on October 3, 2003. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*), Dr. Rodriguez evaluated appellant's impairment and found that she had a six percent right lower extremity impairment. Under Table 16-10, page 482 and Table 17-37, page 552 of the A.M.A., *Guides*, he found that appellant's right lateral plantar nerve had a Grade 2 or 75 percent deficit of the maximum 5 percent lower extremity impairment of the nerve, or actual 4 percent impairment. Dr. Rodriguez also found that appellant had moderate, intermittent pain towards the right side which resulted in a two percent lower extremity impairment under section 18.3d.C, page 573 of the A.M.A., *Guides*.

By memorandum dated August 2, 2004, the Office asked an Office medical adviser to review the medical evidence, including a July 1, 2004 report from Dr. David Pashman, a Board-certified orthopedist, who served as an impartial medical examiner, with respect to whether appellant continued to have residuals of her work-related injury. On July 1, 2004 Dr. Pashman noted the history of injury and provided examination findings. His examination revealed that the last 10 to 15 degrees of dorsiflexion in the right lower extremity were lacking compared to the left lower extremity. A positive Tinel's sign was noted proximal posteromedially to the medial malleolus, which reflected pain distally on the lateral aspect of the foot. A half-inch atrophy of the right calf was noted as well as hypesthesias to light cutaneous touch of the lateral three toes on the foot. No other soft tissue swelling, calf tenderness or signs of skin discoloration or allodynia were noted. Dr. Pashman advised that appellant had objective evidence of a slight decreased dorsiflexion from her healed tibial fracture. Appellant also had hypesthesia on the lateral aspect of the foot and a positive Tinel's posteromedially, which he opined was consistent with possible entrapment of the posterior tibial nerve involving the lateral calcaneal branches. Dr. Pashman explained that, since he did not see any nerve conduction studies in the record to document a conduction delay through the tarsal tunnel, he disagreed with Dr. Rodriguez's opinion that she had a tarsal tunnel syndrome and opined that her symptoms were more diagnostic of a nerve entrapment. He further stated that appellant had some residual calf atrophy from her fractured tibia and fibula. Dr. Rodriguez recommended a homebound program with home exercises and nonnarcotic analgesics or anti-inflammatory medications for symptomatic relief. Pending improvement of her pain status, he additionally recommended limited gait training. Dr. Pashman did not render an opinion on permanent impairment.

On October 14, 2004 the Office medical adviser determined that appellant had a 12 percent impairment of her right lower extremity. He reported that appellant had reached maximum medical improvement on September 30, 2003 and the medical evidence showed a half inch atrophy of the right calf, limited dorsiflexion and decreased sensation in the lateral three toes of the foot. Utilizing the A.M.A., *Guides*, the Office medical adviser rated impairment based on loss of range of motion under Table 17-11, page 537 and Table 17-37, page 552 of the A.M.A., *Guides*, extension of 10 degrees resulted in a 7 percent lower extremity impairment. The deficit of the superficial peroneal resulted in a 5 percent lower extremity impairment. He excluded an impairment based on atrophy as Table 17-2, page 526 of the A.M.A., *Guides* did not

allow muscle atrophy to be combined with ratings of peripheral nerve and range of motion loss. Utilizing the Combined Values Chart on page 604 of the A.M.A., *Guides*, he determined that appellant had a 12 percent left lower extremity impairment.

By decision dated November 14, 2004 and reissued January 25, 2005,[1] the Office granted a schedule award for a 12 percent impairment of the right lower extremity. The period of the award ran for 34.56 weeks, from September 30, 2003 to May 28, 2004.

On January 28, 2005 appellant requested an oral hearing. After the oral hearing was scheduled for November 30, 2005, appellant's attorney requested a review of the written record. No additional medical evidence addressing impairment was submitted.[2]

By decision dated July 28, 2006, an Office hearing representative affirmed the January 25, 2005 schedule award decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulation[4] 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.[5]

ANALYSIS

Appellant received a schedule award for 12 percent impairment to her right lower extremity based on the opinion of the Office medical adviser. The Office medical adviser reviewed the medical evidence of record which included Dr. Rodriguez's November 5, 2003 opinion that appellant had a six percent right lower extremity impairment and Dr. Pashman's July 1, 2004 report. As previously noted, Dr. Pashman did not evaluate appellant with regard to the extent of her permanent impairment. Although the report of Dr. Pashman is not entitled to the special weight afforded to the opinion of an impartial medical specialist resolving a conflict of medical opinion, his report can still constitute the weight of the medical evidence.[6]

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[1] The first decision was apparently sent to the wrong address and erroneously reflected that the award was for the left lower extremity.

[2] Additional reports dated April 26, 2005 to May 2, 2006 from the Injury Rehabilitation Centers of Pennsylvania were of record.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *Id.*

[6] *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

The Office medical adviser found a seven percent lower extremity impairment for loss of extension.[7] This is consistent with Dr. Pashman's examination findings that appellant lacked the last 10 to 15 degrees of dorsiflexion. The Office medical adviser also found a five percent lower extremity impairment based on a sensory deficit of the superficial peroneal nerve.[8] This is consistent with Dr. Pashman's finding of a positive Tinel's sign proximal posteromedially to the medial malleolus. Although Dr. Pashman found a half inch atrophy of the right calf, the Office medical adviser properly excluded muscle atrophy measurement from the impairment rating under Table 17-2, page 526 of the A.M.A., *Guides*. Table 17-2 precludes combining atrophy loss with impairment based on loss of motor or sensory loss. Utilizing the Combined Values Charts, the Office medical adviser determined that appellant was entitled to a 12 percent impairment of the right lower extremity.

Appellant disagreed with her award for 12 percent impairment of the right lower extremity. There is no evidence, however, that she had greater impairment. Additionally, Dr. Pashman explained why the lack of a documented conduction delay through the tarsal tunnel, caused him to believe appellant's symptoms were diagnostic of a nerve entrapment as opposed to Dr. Rodriguez's opinion that appellant had a tarsal tunnel syndrome.

The Office medical adviser's report conforms to the A.M.A., *Guides* and his opinion constitutes the weight of the evidence.[9] Consequently, appellant has not established that she has more than 12 percent impairment of her right lower extremity.

CONCLUSION

The Board finds that appellant has no more than a 12 percent impairment of her right lower extremity for which she received a schedule award.

[7] A.M.A., *Guides* 537, Table 17-11.

[8] *Id.* at 552, Table 17-37.

[9] *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2007
Washington, DC

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

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

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