

**United States Department of Labor
Employees' Compensation Appeals Board**

D.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Perth Amboy, NJ, Employer**

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**Docket No. 07-131
Issued: May 1, 2007**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 18, 2006 appellant timely appealed the May 3, 2006 merit decision of the Office of Workers' Compensation Programs, which affirmed a schedule award for permanent impairment of the left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the schedule award.

ISSUE

The issue is whether appellant has greater than 20 percent impairment of the left lower extremity.

FACTUAL HISTORY

On April 28, 1997 appellant, then a 36-year-old distribution window clerk, sustained an employment-related lower back injury while lifting a sack weighing 40 to 60 pounds. The Office accepted her claim for lumbosacral strain and authorized a November 4, 1997 discectomy at L5-S1.

Appellant filed a claim for a schedule award on February 19, 2003. In a report dated December 28, 2002, Dr. David Weiss, a Board-certified orthopedist, found 45 percent impairment of the left lower extremity. The Office referred appellant to Dr. Robert Dennis, a Board-certified orthopedic surgeon, for a second opinion. Dr. Dennis examined appellant on May 13, 2003 and found 31 percent impairment of the left lower extremity.

The Office declared a conflict of medical opinion and referred appellant for an impartial medical examination with Dr. Ian B. Fries, a Board-certified orthopedic surgeon. In a report dated August 25, 2003, Dr. Fries provided two alternative methods for calculating appellant's left lower extremity impairment. Both methods took into account impairment for left hallux extension weakness 4+/5, left lateral plantar foot sensory deficit and loss of left ankle reflex. One rating method resulted in a finding of 20 percent impairment and the other method revealed a lesser impairment of 16 percent. The district medical adviser agreed with Dr. Fries 20 percent impairment rating.

By decision dated October 15, 2003, the Office granted a schedule award for 20 percent impairment of the left lower extremity. The award covered a period of 57.6 weeks from August 25, 2003 to October 1, 2004. However, the October 15, 2003 schedule award was subsequently vacated and the case was remanded to the Office to obtain clarification from Dr. Fries regarding his alternative impairment ratings.

In a January 3, 2005 supplemental report, Dr. Fries explained, among other things, that the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) indicate that several evaluation methods may be applicable to an individual case. He also noted that the A.M.A., *Guides* suggest the greatest impairment rating be chosen. According to Dr. Fries, the difference between the two alternative impairment ratings was consistent with the inaccuracies of biological measurements, the inherent inaccuracies of the A.M.A., *Guides*, and estimates required by an examining physician.

The Office also received supplemental reports from both Dr. Weiss and Dr. Dennis reaffirming their earlier impairment ratings of 45 and 31 percent, respectively.

In a February 11, 2005 decision, the Office found that appellant was not entitled to an award in excess of the previously awarded 20 percent impairment of the left lower extremity.

Appellant requested a hearing, which was held on February 28, 2006. Following the hearing, she submitted an amended December 28, 2002 report from Dr. Weiss. The amended report differed from the original in two respects. Initially, Dr. Weiss assigned five percent impairment for 3/5 motor strength deficit involving the left gastrocnemius. In his amended report, Dr. Weiss increased the left gastrocnemius impairment to 25 percent. But unlike the initial report, the amended report did not include an additional three percent impairment for pain. Dr. Weiss' amended report found a combined left lower extremity impairment of 42 percent.

In a decision dated May 3, 2006, the hearing representative affirmed the Office's February 11, 2005 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.¹ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.² Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).³

ANALYSIS

The Office determined that a conflict of medical opinion existed based on the opinions of Dr. Weiss and Dr. Dennis. Therefore, the Office properly referred appellant to an impartial medical examiner.⁴ Dr. Fries, the impartial medical examiner, provided alternative impairment ratings of 16 and 20 percent of the left lower extremity. Both ratings included impairment for loss of left ankle reflex, lateral plantar foot sensory deficit and left hallux extension weakness. In his supplemental report, Dr. Fries explained that the A.M.A., *Guides* suggests that the greatest impairment rating be chosen. When the district medical adviser reviewed Dr. Fries' findings on September 12, 2003, he concurred with the 20 percent impairment rating.

The Board finds that the Office properly relied on the impartial medical examiner's findings. Dr. Fries' opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant's medical records. Dr. Fries also reported accurate medical and employment histories. Furthermore, his 20 percent impairment rating is consistent with the A.M.A., *Guides* (5th ed. 2001) and the district medical adviser concurred.⁵ Accordingly, the Office properly accorded determinative weight to the impartial medical examiner's findings.⁶

Appellant has not submitted any credible medical evidence indicating that he has greater than 20 percent impairment of the left lower extremity. The supplemental reports from both

¹ The Act provides that, for a total, or 100 percent loss of use of a leg, an employee shall receive 288 weeks of compensation. 5 U.S.C. § 8107(c)(2) (2000).

² 20 C.F.R. § 10.404 (2006).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁴ The Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁵ See A.M.A., *Guides* 482, Table 16-10; A.M.A., *Guides* 484, Table 16-11; A.M.A., *Guides* 551, Figures 17-8 and 17-9; A.M.A., *Guides* 552, Table 17-37; A.M.A., *Guides* 604-06, Combined Values Chart.

⁶ Where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

Dr. Dennis and Dr. Weiss are insufficient to overcome the weight accorded Dr. Fries' opinion. Moreover, these reports are insufficient to create a new conflict of medical opinion.⁷

CONCLUSION

Appellant has not demonstrated that she has greater than 20 percent impairment of the left lower extremity.

ORDER

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

Issued: May 1, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁷ A subsequently submitted report of a physician on one side of a resolved conflict of medical opinion is generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion. *Richard O'Brien*, 53 ECAB 234, 242 n.6 (2001).