

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

M.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Rella, MO, Employer**

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**Docket No. 07-2069
Issued: August 7, 2008**

Appearances:

Thomas S. Harkins, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 6, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated May 11, 2007. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to a schedule award greater than the four percent permanent impairment of her right lower extremity already awarded.

FACTUAL HISTORY

Appellant, a 45-year-old rural carrier, injured her left hip and left hamstring on December 24, 2002 when the vehicle she was driving slid on a patch of ice and landed in a ditch. She filed a claim for benefits on December 26, 2002, which the Office accepted for left hip and left thigh sprain with contusions. The Office expanded the claim to include the conditions of left biceps, femoris partial tear and aggravation of right ankle posterior tibialis tendinitis. On December 10, 2003 appellant slipped on an icy parking lot and experienced pain in her lower

back. She filed a claim for benefits on January 12, 2004, which the Office accepted for lumbar strain with right sciatic nerve irritation and aggravation of lumbar strain.

On February 3, 2006 appellant filed a Form CA-7 claim for a schedule award based on loss of use of her left and right lower extremities.

In a report dated March 23, 2006, Dr. Robert R. Conway, Board-certified in physical medicine and rehabilitation, found that appellant had a two percent permanent impairment of the right lower extremity. This was derived from a one percent permanent impairment due to loss of eversion and a one percent permanent impairment due to loss of inversion. Dr. Conway stated:

“Active range of motion of the right ankle measured using a goniometer revealed 12 degrees ankle dorsiflexion, 58 degrees ankle plantar flexion, 10 degrees eversion and 18 degrees inversion.”

He found that appellant had no impairment stemming from her accepted right and left hip condition. Dr. Conway did rate any impairment for the left lower extremity.

In a report dated April 5, 2006, an Office medical adviser reviewed Dr. Conway's findings and conclusions and applied them to the applicable figures and tables of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (fifth edition). The Office medical adviser determined that appellant had a four percent permanent impairment of the right lower extremity under the A.M.A., *Guides* based on loss of eversion and inversion. The Office medical adviser stated:

“Using Table 17-12, page 537, the lower extremity rating due to range of motion limitations in inversion and eversion is four percent.

“The zero percent lower extremity rating for the hips condition is acceptable. The impairment.

On April 12, 2006 the Office granted appellant a schedule award for a four percent permanent impairment of the right lower extremity for the period March 23 to June 11, 2006 for a total of 11.52 weeks of compensation.

By letter dated March 29, 2007, appellant's attorney requested reconsideration.

In a report dated March 9, 2007, Dr. Joann Mace, Board-certified in physical medicine and rehabilitation, found that appellant had a 15 percent impairment of the left lower extremity at the hip level and a 15 percent impairment of the right lower extremity at the hip level pursuant to Table 17-1 at page 525 and Table 17-5, page 529 of the A.M.A., *Guides*; and an 8 percent impairment of the lumbar spine as a whole pursuant to the A.M.A., *Guides*. The report included an extensive review of appellant's medical history, dating back to her December 24, 2002 and December 10, 2003 injuries.

In a report dated April 16, 2007, an Office medical adviser reviewed Dr. Mace's findings and conclusions and found that they provided no basis for an additional award under the A.M.A., *Guides*. He found that the report merely recapitulated appellant's medical history and

Dr. Mace's office notes and that Dr. Mace's ratings were not based on a current examination of appellant. The Office medical adviser therefore determined that appellant had no greater than the four percent permanent impairment of the right lower extremity already awarded.

By decision dated May 11, 2007, the Office denied modification of the April 12, 2006 schedule award decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ set 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 loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.³

ANALYSIS

The Office medical adviser determined that appellant had a four percent permanent impairment of the right lower extremity by adopting Dr. Conway's findings regarding decreased range of motion of the right ankle. The finding of a four percent impairment of the right lower extremity was based on loss of range of motion pursuant to Table 17-12, which measures lower extremity motion impairments based on loss of inversion and eversion.⁴ Dr. Conway calculated 18 degrees inversion and 10 degrees eversion of the right ankle, both of which translate to a mild lower extremity impairment ranging between one and three percent under Table 17-12. The Office medical adviser rated a total four percent impairment pursuant to Table 17-12 based on appellant's loss of inversion and eversion. This finding was proper and in conformance with the protocols of the A.M.A., *Guides*.

The Board finds that the Office's April 12, 2006 decision granting appellant an additional schedule award for a four percent right lower extremity impairment was properly based on the available evidence of record and calculated in accordance with the applicable tables of the A.M.A., *Guides*. Following this decision, appellant requested reconsideration and submitted Dr. Mace's March 9, 2007 report. As the Office medical adviser found, this report merely represented a summary of appellant's medical history and was not based on calculations derived by examination. Dr. Mace's ratings were not based on a current examination of appellant and were not in conformance with the applicable protocols of the A.M.A., *Guides*. The ratings for a 15 percent impairment of the left and right lower extremity based on a hip impairment are

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

² 5 U.S.C. § 8107(c)(19).

³ 20 C.F.R. § 10.404.

⁴ A.M.A., *Guides* 537.

generalized and were also not based on an examination of appellant; thus, these ratings were not rendered in accordance with the standards of the A.M.A., *Guides*.⁵ Dr. Mace also provided a rating of an eight percent whole person impairment of the lumbar spine. However, this rating is not probative, as the Act does not provide for permanent impairment of the whole person.⁶ As appellant did not submit any medical evidence to support an additional schedule award greater than the four percent for the right lower extremity already awarded, the Board will affirm the Office's May 11, 2007 decision.

As there is no other medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that appellant was not entitled to more than the four percent impairment of the right lower extremity already awarded.

CONCLUSION

The Board finds that appellant has no more than a four percent additional impairment of the right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 7, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁵ The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. *See Peter C. Belkind*, 56 ECAB 580, 585 (2005).

⁶ *See, e.g., Timothy J. McGuire*, 34 ECAB 189 (1982).