

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

P.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA, Employer**

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**Docket No. 08-1490
Issued: December 16, 2008**

Appearances:

*Thomas R. Uliase, 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 28, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 12, 2007 with respect to a schedule award. Pursuant to 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 has more than a three percent left leg permanent impairment.

FACTUAL HISTORY

The Office accepted that appellant sustained left plantar fascial fibromatosis causally related to his federal employment. In a report dated July 1, 2004, Dr. Nicholas Diamond, an osteopath, provided a history and results on examination. He reported calf circumference of 41.5 centimeters on the right and 40 cm. on the left. Dr. Diamond opined that appellant had an 8

percent left leg impairment for left calf atrophy, and 3 percent for pain, resulting in an 11 percent leg impairment.

By report dated December 30, 2004, an Office medical adviser stated that the atrophy of 1.5 centimeters was reported incorrectly because it did not state the method of measurement and no atrophy was reported by the treating podiatrist. The medical adviser opined that appellant had three percent leg impairment due to pain, citing Chapter 18 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In a decision dated January 6, 2005, the Office issued a schedule award for a three percent left leg impairment. The period of the award was 8.64 weeks from July 1, 2004. By decision dated September 29, 2005, an Office hearing representative set aside the January 6, 2005 decision, finding a conflict under 5 U.S.C. § 8123(a) existed. The case was remanded to the Office to refer appellant for a referee examination and resolution of the conflict.

The Office prepared a statement of accepted facts and referred appellant to Dr. Richard Schmidt, a Board-certified orthopedic surgeon. In a report dated March 15, 2006, Dr. Schmidt provided a history and results on examination. He indicated that appellant did not report current symptoms and his examination was within normal limits. Dr. Schmidt opined that he did not find any evidence of an ongoing plantar fasciitis and appellant had recovered from his work injury.

By decision dated September 29, 2006, the Office found Dr. Schmidt represented the weight of the medical evidence and appellant did not have more than a three percent left leg permanent impairment.

Appellant requested a hearing before an Office hearing representative, which was held on January 23, 2007. In a decision dated March 21, 2007, the Office hearing representative remanded the case for further development. The hearing representative found that Dr. Schmidt did not provide specific measurements regarding calf circumference and therefore did not fully address the issue of an impairment based on calf atrophy.

On remand, the Office secured an April 23, 2007 supplemental report from Dr. Schmidt, who indicated that he examined appellant on that date and provided results on examination, finding that mid calf circumference was 14 inches bilaterally. He noted that appellant had a normal gait and no clinical findings of ongoing plantar fasciitis. Dr. Schmidt stated that circumference measurements were equal bilaterally for the calves, thighs, ankles and mid foot. He reported no evidence of atrophy and full range of ankle motion.

By decision dated May 21, 2007, the Office found Dr. Schmidt represented the weight of the medical evidence and appellant was not entitled to an additional schedule award. In a December 12, 2007 decision, an Office hearing representative affirmed the May 21, 2007 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the

claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.²

It is well established that when a case is referred to a referee physician for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.³

ANALYSIS

The Office found a conflict existed between Dr. Diamond and an Office medical adviser regarding the degree of permanent impairment in the left leg.⁴ Dr. Diamond had found eight percent leg impairment based on calf atrophy, while the Office medical adviser the atrophy impairment had not been properly established.

Table 17-6 of the A.M.A., *Guides* provides leg impairment ratings based on muscle atrophy in the thigh or calf. As the A.M.A., *Guides* explain, calf circumference is measured at the maximum level and is compared to the opposite leg.⁵ The referee physician, Dr. Schmidt, provided a March 15, 2006 report that found a normal examination. He did not provide specific calf measurements, and the case was remanded for a supplemental report. In his April 23, 2007 report, Dr. Schmidt again examined appellant and found the calf circumference was equal in both legs at 14 inches. While appellant argues that Table 17-6 requires measurements in centimeters, there is nothing to suggest that a conversion from inches to centimeters would result in impairment under Table 17-6. Dr. Schmidt clearly indicated the calf measurements were equal, and therefore there is no basis for an impairment based on atrophy.

The Board finds that Dr. Schmidt provided a complete medical report that does not support a permanent impairment to the left leg greater than the three percent previously awarded. As noted above, the rationalized opinion of a referee examiner is entitled to special weight. He represents the weight of the evidence and resolves the conflict in the medical evidence in this case.

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

² *A. George Lampo*, 45 ECAB 441 (1994).

³ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁴ 5 U.S.C. § 8123(a) provides that when there is a disagreement between an attending physician and a physician making the examination for the Office, a third physician is appointed to make an examination.

⁵ A.M.A., *Guides* 530, Table 17-6.

CONCLUSION

The probative medical evidence does not establish more than a three percent left leg permanent impairment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 12 and May 21, 2007 are affirmed.

Issued: December 16, 2008
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