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

Y.G., Appellant	)
and	) Docket No. 10-108
U.S. POSTAL SERVICE, POST OFFICE, Milwaukee, WI, Employer	) Issued: July 13, 2010
	_ )
Appearances: Appellant, pro se	Case Submitted on the Record
Office of Solicitor, for the Director	

## **DECISION AND ORDER**

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

#### *JURISDICTION*

On October 14, 2009 appellant filed a timely appeal from a June 11, 2009 Office of Workers' Compensation Programs' schedule award decision. 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 has more than seven percent permanent impairment to her right lower extremity.

#### **FACTUAL HISTORY**

Appellant, a 37-year-old mail clerk, fractured her right ankle on December 3, 2007 when she slipped on ice while walking down a flight of steps. She filed a claim for benefits on December 4, 2007, which the Office accepted for closed fracture of the right lateral malleolus and closed fracture of the right malleolus.

In a report dated March 6, 2009, Dr. John T. Kroner, Board-certified in orthopedic surgery, stated that he did not anticipate any further improvement in appellant's condition. He

advised that she had 10 percent restriction of dorsi and plantar flexion of the ankle compared to the opposite side, with a significant propensity for possible arthritic development over time. Based on these factors, Dr. Kroner rated 7.5 percent impairment to the right lower extremity as compared to an amputation at the level of the right ankle.

On March 11, 2009 appellant filed a Form CA-7 claim for a schedule award based on loss of use of her right lower extremity.

In a report dated March 25, 2009, Dr. Eric Malicky, Board-certified in orthopedic surgery, found that appellant had 10 percent permanent impairment of the right leg. He based this rating on loss of range of motion to the right ankle of 10 degrees dorsiflexion and 40 degrees palmar flexion.

In a report dated May 6, 2009, an Office medical adviser found that appellant had a seven percent impairment of her right lower extremity based on loss of range of motion in the right ankle pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*). Relying on Dr. Malicky's findings on examination, he found that 10 degrees dorsiflexion represented seven percent impairment for loss of range of motion in the ankle under Table 16-22 at page 549 of the sixth edition of the A.M.A., *Guides*.<sup>1</sup>

On June 11, 2009 the Office granted appellant a schedule award for a seven percent permanent impairment of the right leg. The period of the award ran from March 25 to August 13, 2009, or a total of 20.16 weeks of compensation.

## **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act,<sup>2</sup> and its implementing federal regulations,<sup>3</sup> 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 for all claimants, the Office has adopted the A.M.A., *Guides*, as the uniform standard applicable to all claimants.<sup>4</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate

<sup>&</sup>lt;sup>1</sup> The Office medical adviser stated that his rating differed from that of Dr. Kroner because he based his rating on the sixth edition of the A.M.A., *Guides*, contrary to Dr. Kroner, who did not reference the A.M.A., *Guides* in his March 25, 2009 report.

<sup>&</sup>lt;sup>2</sup> 5 U.S.C. §§ 8101-8193; see 5 U.S.C. § 8107(c).

<sup>&</sup>lt;sup>3</sup> 20 C.F.R. § 10.404.

<sup>&</sup>lt;sup>4</sup> *Id.* at § 10.404(a).

schedule awards.<sup>5</sup> The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.<sup>6</sup>

#### **ANALYSIS**

The Office accepted appellant's claim for a right ankle fracture sustained on December 3, 2007.

An Office medical adviser utilized the findings on examination made by Dr. Malicky in a March 25, 2009 report. The Office medical adviser cited Table 16-22 at page 549 of the sixth edition of the A.M.A., *Guides*, which rates impairment of the ankle based on loss of range of motion. Appellant had seven percent impairment based on 10 degrees dorsiflexion of the right ankle. The Office medical adviser properly applied the A.M.A., *Guides* to rate the impairment.

The only other impairment rating of record is that of Dr. Kroner, who stated that appellant had 10 percent restriction of dorsi and plantar flexion of the ankle compared to her opposite ankle, with the possibility of future arthritic development. He rated 7.5 percent impairment of the right leg. Dr. Kroner's report is of diminished probative value, however, he did not refer to any of the applicable protocols or tables of the sixth edition of the A.M.A., *Guides* in making his impairment rating.<sup>7</sup> Accordingly, the Board finds that the Office properly relied on the opinion of the Office medical adviser as the basis for the June 11, 2009 schedule award decision.<sup>8</sup> The Board finds that appellant has no more than seven percent impairment to her right leg. There is no other probative medical evidence establishing that greater impairment.

# **CONCLUSION**

The Board finds that appellant has seven percent permanent impairment to her right lower extremity.

<sup>&</sup>lt;sup>5</sup> See FECA Bulletin No. 09-03 (issued March 15, 2008).

<sup>&</sup>lt;sup>6</sup> Veronica Williams, 56 ECAB 367, 370 (2005).

<sup>&</sup>lt;sup>7</sup> 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).

<sup>&</sup>lt;sup>8</sup> See Tommy R. Martin, 56 ECAB 273 (2005).

# **ORDER**

**IT IS HEREBY ORDERED THAT** the June 11, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 13, 2010 Washington, DC

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

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

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