

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILLIP M. KRISMAN and U.S. POSTAL SERVICE,
POST OFFICE, Beverly Hills, Calif.

*Docket No. 97-795; Submitted on the Record;
Issued December 18, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he has greater than a 10 percent permanent impairment for loss of use of the left leg, for which he received a schedule award.

Appellant, a 47-year-old letter carrier, filed a Form CA-2, claim for compensation for occupational disease, on May 16, 1994, alleging that he had a bone spur in his left foot which was caused by the factors of employment, and that he became aware of this condition on March 8, 1995. The Office ultimately accepted the claim for bone spur, left heel, and surgery performed on May 27, 1994 in a letter dated August 29, 1995.

Appellant filed another Form CA-2, claim for compensation for occupational disease, on March 16, 1995, contending he had sustained a posterior tibial nerve condition in his left ankle caused by walking and standing at work, and that he first became aware this condition was caused by employment factors on March 8, 1995.¹

By letters dated April 22, 1996, the Office scheduled appellant for an examination with Dr. Suzette Lee, his treating podiatrist, to evaluate the extent of permanent partial impairment in his left leg.

On May 2, 1996 appellant filed a Form CA-7, claim for a schedule award based on partial loss of use of his left leg.

¹ In a report dated August 18, 1995, Dr. Lee stated that she performed plantar fasciotomy surgery on appellant on May 27, 1994, which initially reduced the pain in his left heel, but that he subsequently developed pain along the medial aspect of the foot and ankle. Dr. Lee stated that appellant eventually developed a condition known as tarsal tunnel syndrome, which was caused by excessive walking and standing, and that she performed a second surgery on appellant's foot on March 31, 1995. Dr. Lee concluded that appellant's condition was not likely to improve given his occupation, and recommended that he pursue disability retirement because of his current medical condition.

In a report received by the Office on May 29, 1996, Dr. Lee indicated that appellant had extreme pain when he was on his feet for extended periods of time, and that the pain was located primarily along the medial ankle joint margin along the posterior tibial nerve. Dr. Lee also stated that appellant had a numbness/burning type of pain, with chronic peripheral edema.

Dr. Lee calculated appellant's range of motion in his left leg by determining that he had 20 degrees dorsiflexion in his left ankle as compared to 20 degrees dorsiflexion in his right ankle; 40 degrees plantar flexion in his left ankle as compared with 40 degrees plantar flexion in his right ankle; 35 degrees inversion in his left ankle as opposed to 30 degrees inversion in his right ankle; and 20 degrees eversion in his left ankle as opposed to 20 degrees eversion in his right ankle, with no ankylosis. Dr. Lee also noted a hypertrophic scar on appellant's left ankle, and concluded that appellant reached maximum medical improvement as of December 20, 1995.

Dr. Lee determined that in the metatarsophalangeal joint along toes 2 through 5, appellant had 40/30 degrees range of motion in his right toes, and 40/30 degrees range of motion in his left toes. With regard to measurable weakness or atrophy in the lower extremity or foot as a result of the foot/toe pathology, Dr. Lee determined that appellant's ankle joint had 12 inches affected and 11 inches nonaffected, and that appellant's calves had 19 inches affected and 19 inches nonaffected.

Further, Dr. Lee stated that appellant had pain and numbness along the course of his posterior tibial nerve, and numbness along the lateral calcaneal nerve distribution of his left foot. Finally, Dr. Lee stated that the interphalangeal joint of the big toe had 25 degrees range of motion in both great toes, with 50/20 degrees range of motion in the metatarsophalangeal joint in the right big toe and 50/20 degrees range of motion in the left big toe.

In a September 5, 1996 memorandum to the Office medical adviser, Dr. Leonard A. Simpson, an Office orthopedic consultant and specialist in orthopedic surgery, reviewed appellant's medical records and, referring specifically to Dr. Lee's impairment evaluation, stated:

"Pain is described as mainly in the medial ankle joint margin along the posterior tibial nerve with numbness and burning type pain with the individual also having chronic peripheral edema. Some numbness was described along the lateral calcaneal nerve distribution. These subjective complaints described as "extreme pain" would be graded quite high according to the grading scheme found in chapter three of the fourth edition of "the *Guides*,"² *i.e.*; a grade IV or an 80 percent grade of sensory branches, which in this particular case would involve branches of the sciatic nerve for dysesthesia or a maximal 12 percent or 80 percent of this being a 9.6 percent rounded off to 10 percent impairment for pain factors. Ankle dorsiflexion of 20 degrees with plantar flexion of 40 degrees would be equivalent to a 0 percent impairment. There was no significant loss of subtalar motion for a 0 percent impairment. Calf girths were equal demonstrating no significant atrophy. There was no loss of toe motion for a 0 percent

² See The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition).

impairment. Utilizing the Combined Values Chart, the 10 percent for pain factors combined with the 0 percent for atrophy or weakness would be equivalent to a 10 percent lower extremity impairment with date of maximum medical improvement reached by December 20, 1995....”

On October 29, 1996 the Office granted appellant a schedule award for a 10 percent permanent impairment of the left leg for the period December 20, 1995 to July 8, 1996, for a total of 28.80 weeks of compensation.

The Board finds that appellant has no more than a 10 percent permanent impairment for loss of use of his left leg, for which he has received a schedule award.

The schedule award provision of the Federal Employees’ Compensation Act³ and its implementing regulation⁴ 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.⁵ However, neither the Act nor its regulations specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* (fourth edition) have been adopted by the Office for evaluating schedule losses, and the Board has concurred in such adoption.⁶

In the instant case, the Office determined that appellant had a 10 percent permanent impairment of his left leg by adopting the findings of Dr. Simpson, who determined the precise impairment rating by gauging the subjective degree of pain in the medial ankle joint margin along the posterior tibial nerve, along with appellant’s chronic peripheral edema, together with some numbness along the lateral calcaneal nerve distribution involving branches of the sciatic nerve. Dr. Simpson calculated that appellant had a zero percent impairment from loss of flexion, loss of dorsiflexion, loss of motion, and atrophy or weakness.

The Board concludes that Dr. Simpson, the Office orthopedic consultant, correctly applied the A.M.A., *Guides* in determining that appellant has no more than a 10 percent permanent impairment for loss of use of the left leg, for which he has received a schedule award from the Office, and that appellant has failed to provide probative, supportable medical evidence that he has greater than the 10 percent impairment already awarded.

Accordingly, the decision of the Office of Workers’ Compensation Programs dated October 29, 1996 is hereby affirmed.

³ 5 U.S.C. § 8101 *et seq.*; *see* 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.304.

⁵ 5 U.S.C. § 8107(c)(19).

⁶ *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

Dated, Washington, D.C.
December 18, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member