U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIMBERLY A. CHAPPELLE and U.S. POSTAL SERVICE,
POST OFFICE, Clementon, N.J.

Docket No. 97-1177; Submitted on the Record;
Issued December 24, 1998

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 9 percent permanent impairment of the left lower extremity, for which she received a schedule award.

On September 25, 1989 appellant, a letter carrier, sustained an injury while in the performance of her duty. The Office of Workers' Compensation Programs accepted her claim for sprain of the talofibular ligament. Appellant filed a claim for a schedule award.

To support her claim, appellant submitted a September 29, 1993 report from Dr. Nicholas P. Diamond, a Diplomate of the American Academy of Pain Management. Dr. Diamond related appellant's history of injury, complaints and findings on physical examination. These findings included tenderness over the anterior aspect of the left ankle, lateral malleolus and gastrocnemius; positive weight bearing; dorsiflexion of 10/20 degrees; plantar flexion of 25/40 degrees; inversion of 10/20 degrees; eversion of 20/30 degrees; a motor strength grade of 4+/5 involving the left lower extremity; and deep tendon reflexes of 2/4. The upper leg circumference at 3 inches above the knee revealed 50 centimeters on the right and 49 on the left. The lower leg circumference at three inches below the knee was equal bilaterally. Dr. Diamond diagnosed left ankle chronic pain (left talofibular and left collateral ligament) and chronic gastrocnemius myofascitis, left. He reported that appellant still suffered residuals of her traumatic injury, including pain with increased activity, difficulty with kneeling and squatting, increased pain in cold and damp weather, and restrictions in the activities of daily living. Dr. Diamond reported that, as a result of her September 25, 1989 employment injury, appellant had a 21 percent permanent disability "according to A.M.A., Impairment Rating" as follows: 10 percent for range of motion loss; 3 percent for upper leg circumference difference; and 17 percent for lower extremity muscle weakness.

Dr. Charles E. Wilkins, Jr., appellant's attending orthopedic surgeon, wrote that he had reviewed Dr. Diamond's report and agreed with his findings that appellant had a 21 percent impairment to the left lower extremity. On August 15, 1994 Dr. Wilkins reported that his

estimate was of a 25 percent impairment to the lower extremity based on parameters similar to those reported by Dr. Diamond in his September 29, 1993 report. On May 8, 1995 Dr. Wilkins reported that he had reviewed Dr. Diamond's report and had no disagreement with his disability ratings. "This would appear to be quite compatible with my findings as well," he reported.

An Office medical adviser reviewed Dr. Diamond's findings and reported on September 1, 1995 that, according to Tables 42 and 43, page 78, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.), dorsiflexion of 10 degrees represented an impairment of 7 percent; plantar flexion of 25 degrees, 0 percent; inversion of 10 degrees, 2 percent; and eversion of 20 degrees, 0 percent, for a total of 9 percent. The Office medical adviser noted that FECA Bulletin No. 95-17 precluded the use of muscle atrophy and muscle weakness as separate impairments.[1] He also noted that Dr. Diamond provided no medical rationale to support muscle weakness of the ankle and had reported measurements of both calves to be equal.

On January 19, 1996 the Office issued a schedule award for a nine percent permanent impairment of the left lower extremity. In an undated decision, following a hearing on August 13, 1996, the Office affirmed its decision of January 19, 1996.[2]

The Board finds that this case is not in posture for a determination of whether appellant has more than a 9 percent permanent impairment of the left lower extremity.

Section 8107 of the Federal Employees' Compensation Act[3] and section 10.304 of the implementing federal regulations[4] authorize the payment of schedule awards for the loss or permanent impairment of specified members, functions or organs of the body. Neither the Act nor the regulations, however, specify how the percentage of impairment 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 standard for determining the percentage of impairment, and the Board has concurred in such adoption.[5] FECA Bulletin No. 94-4 states that any recalculations or previous awards that result from hearings, reconsideration or appeals should be based on the fourth edition of the A.M.A., *Guides* effective November 1, 1993.[6]

Using examination criteria to describe appellant's impairment, Dr. Diamond reported that appellant had a 10 percent impairment for range of motion loss. Tables 42 and 43, page 78, of

[1] FECA Bulletin No. 95-17 (issued March 23, 1995).

[2] The Office issued this decision sometime between August 13, 1996, the date of the hearing and November 15, 1996, the date it returned the case file to the regional Office.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.304.

[5] *See, e.g., Leisa D. Vassar*, 40 ECAB 1287 (1989).

[6] FECA Bulletin No. 94-4 (issued November 1, 1993).

the fourth edition of the A.M.A., *Guides* support that the reported ranges of motion represent a 9 percent permanent impairment.

Dr. Diamond also reported a 3 percent impairment for upper leg circumference and a 17 percent impairment for lower leg muscle weakness. The A.M.A., *Guides* indicates, however, that impairments should not be estimated for both atrophy and muscle weakness. Section 3.2c, page 76, explains that diminished muscle function should be estimated under only one of several parts of that chapter, relating to gait derangement (page 75), muscle atrophy (page 76), manual muscle testing (page 76) or peripheral nerve injury. To this end, FECA Bulletin No. 95-17 states that Table 37, page 77, which relates to impairment from leg muscle atrophy, should not be used with Tables 38 and 39, page 77, which relate to impairment from lower extremity muscle weakness, because doing so will result in duplicate measurements and artificially high percentages of impairment.[7]

The Office medical adviser correctly observed that Dr. Diamond provided no medical rationale to support his rating for lower leg muscle weakness. It is not apparent from his September 29, 1993 report how Dr. Diamond graded appellant's muscle weakness or how he determined that this represented a 17 percent impairment of lower extremity. The Board finds that the Office properly disallowed his rating for weakness.

Dr. Diamond did report objective clinical findings, however, indicating that appellant may be entitled to an additional impairment due to leg muscle atrophy. He reported that the upper leg circumference at 3 inches above the knee revealed 50 centimeters on the right and 49 on the left. Table 37, page 77, indicates that a 1 centimeter difference in circumference 10 centimeters (or about 3.9 inches) above the patella represents an impairment to the lower extremity of 3 to 8 percent. The Office medical adviser did not address Dr. Diamond's rating for the difference in upper leg circumference other than to note that FECA Bulletin 95-17 precluded the use of atrophy and weakness as separate impairments. Although the ratings for atrophy and weakness are mutually exclusive, the Office offered no reason to support that appellant should not be entitled to a schedule award for both loss of motion and atrophy.

Because Dr. Diamond indicates a 3 percent impairment of the left lower extremity due to a difference in circumference of the upper leg, and because his clinical findings and the A.M.A., *Guides* suggest that appellant may be entitled to a schedule award greater than that given solely for loss of range of motion, the Board will set aside the Office's undated decision following the August 13, 1996 hearing and remand the case for proper consideration of this issue, such further development as may be necessary, and an appropriate final decision on appellant's entitlement to schedule compensation.

[7] FECA Bulletin No. 95-17 (issued March 23, 1995).

The undated decision of the Office of Workers' Compensation Programs following the August 13, 1996 hearing is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
December 24, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member