

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERT REDMON and DEPARTMENT OF THE AIR FORCE,
TINKER AIR FORCE BASE, Okla.

*Docket No. 96-1216; Submitted on the Record;
Issued February 17, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has more than a 10 percent permanent impairment to the left leg, for which he received a schedule award.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a left foot fracture in the performance of duty on March 8, 1994. By decision dated December 12, 1995, the Office issued a schedule award for a 10 percent permanent impairment to the left leg. In a decision dated January 25, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant review of the prior decision.

The Board has reviewed the record and finds that appellant has not established more than a 10 percent permanent impairment to the left leg.

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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.²

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. § 10.304(b).

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

In a report dated March 29, 1995, Dr. Raymond L. Smith, a podiatrist, provided results on examination. Dr. Smith opined that appellant had an impairment of 10 percent for loss of range of motion in the 3rd, 4th, and 5th digits, a 7 percent impairment due to sensory deficit or pain, and an 8 percent impairment due to loss of motion in the ankle. The Board notes that Dr. Smith does not refer to specific tables in the A.M.A., *Guides* or otherwise explain how he determined the percentage of impairment, and therefore his opinion as to the percentage of permanent impairment is of little probative value. In accord with its procedures, the Office referred medical records to an Office medical adviser for an opinion as to the percentage of permanent impairment under the A.M.A., *Guides*.³ In a memorandum dated December 3, 1995, the medical adviser indicated that the impairment for loss of range of motion in the ankle was four percent, rather than the eight percent calculated by Dr. Smith. This is based on application of Table 43, which provides impairments due to loss of inversion and eversion motion in the hindfoot.⁴ Dr. Smith reported 5 degrees of eversion, resulting in a 2 percent impairment to the leg under Table 43, and 15 degrees of inversion, which also results in a 2 percent impairment, for a total of 4 percent.

With regard to sensory deficit or pain in the toes, the Office medical adviser identified the sural nerve and the superficial peroneal nerve, and graded the impairment at 60 percent of the maximum 5 percent, resulting in a 3 percent impairment to the leg for each affected nerve. This is in accord with the procedures found in the A.M.A., *Guides*, which requires identifying the affected nerve and the maximum impairment, and then grading the impairment.⁵

The Office medical adviser also noted that although Dr. Smith had awarded a 10 percent impairment for loss of range of motion in the digits, the A.M.A., *Guides* did not provide for an impairment based on the results provided by Dr. Smith. Under Table 45, only a metatarsophalangeal extension in the lesser toes of less than 10 degrees will result in an impairment rating.⁶ Dr. Smith indicated in his report that appellant had 30 degrees of dorsiflexion, and therefore the medical adviser correctly found that appellant did not have an impairment for loss of motion in the lesser toes.

The record indicates that the Office medical adviser properly applied the 4th edition of the A.M.A., *Guides* to the examination results of Dr. Smith in determining that appellant had a 10 percent permanent impairment to the left leg. There is no probative evidence establishing a greater impairment in this case. The Board notes that in a January 23, 1996 report, Dr. Smith does not provide any additional information regarding his prior examination or the percentage of

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995).

⁴ A.M.A., *Guides*, 78, Table 43 (4th ed. 1993).

⁵ A.M.A., *Guides*, 89, Table 68; *see also* 48, Table 11.

⁶ *Id.*, 78, Table 45.

impairments previously offered in his March 29, 1995 report, but limits his discussion to results on examination of January 23, 1996.⁷

The decisions of the Office of Workers' Compensation Programs dated January 25, 1996 and December 12, 1995 are affirmed.

Dated, Washington, D.C.
February 17, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁷ This information would be relevant to a claim for an increased schedule award, which is not before the Board on this appeal.