

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALTON V. BROWN and U.S. POSTAL SERVICE,
POST OFFICE, San Antonio, Tex.

*Docket No. 96-2486; Submitted on the Record;
Issued July 20, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a 10 percent permanent impairment of the right foot for which he has received a schedule award.

The Board has duly reviewed the case record and finds that the medical evidence of record does not establish that appellant has more than a 10 percent permanent impairment of the right foot.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation to be paid for permanent loss or loss of use, of body members listed in the schedule. The Act, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method for making such a determination rests in the sound discretion of the Office of Workers' Compensation Programs. The Office has adopted and the Board has approved the use of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,³ as an appropriate standard for evaluating schedule losses.⁴

In the present case, the Office has accepted that appellant sustained a contusion or blunt trauma to the right first metatarsal, as well as an aggravation of his Hallux Valgus deformity, due to factors of his federal employment. By decision dated August 3, 1995, the Office granted appellant a schedule award for 10 percent permanent loss of use of the right foot.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ A.M.A., *Guides* (4th ed. 1993).

⁴ *James A. Sellers*, 43 ECAB 924 (1992).

On appeal, appellant alleges that his treating physician, Richard Keh, a podiatrist, supported a finding of 20 percent permanent impairment of the right foot. In his report dated June 1, 1995, Dr. Keh noted that appellant had arthritis in his first metatarsal phalangeal joint, causing difficulty with ambulation and pain after prolonged periods of walking and at the end of his range of motion. Dr. Keh noted that pursuant to Table 45, page 78 of the A.M.A., *Guides*, appellant had a category “mild” metatarsal phalangeal extension impairment of 15 to 30 degrees, which equated to impairment ratings of 1 percent of the whole person, or 2 percent of the lower extremity or 3 percent of the foot. Dr. Keh additionally noted that appellant also had impairment from arthritis, with a cartilage interval of approximately 1 millimeter, which, according to Table 62, page 83 of the A.M.A., *Guides*, equated to an impairment rating of 2 percent of the whole person or 5 percent of the lower extremity or 5 percent of the foot.

The Office forwarded Dr. Keh’s report to an Office medical adviser for his review. The medical adviser concurred with Dr. Keh’s findings of a 3 percent range of motion impairment of the right foot and a 7 percent arthritis impairment of the right foot, and noted that when these impairments were combined, appellant merited a total of 10 percent permanent impairment of the right foot for his work-related condition.

The Board has reviewed the medical adviser’s calculations pursuant to the A.M.A., *Guides* and concludes that they are proper.⁵

The decision of the Office of Workers’ Compensation Programs dated August 3, 1995 is hereby affirmed.

Dated, Washington, D.C.
July 20, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Lena P. Huntley*, 46 ECAB 643 (1995).