

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GARRY GRIFFIN and U.S. POSTAL SERVICE,  
POST OFFICE, Dallas, Tex.

*Docket No. 96-946; Submitted on the Record;  
Issued May 22, 1998*

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DECISION and ORDER

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

The issue is whether appellant has more than a 34 percent loss of use of the left leg and 34 percent loss of use of the right leg for which he has received schedule awards.

The Board has duly reviewed the case record and finds that appellant has not established that he is entitled to a greater schedule award.

This is the second appeal of this case. By decision dated February 21, 1992,<sup>1</sup> the Board remanded this case to the Office of Workers' Compensation Programs for further medical development. The Board found that the evidence of record indicated that appellant had a greater impairment of the great toes than that calculated by the Office medical adviser. By decision dated March 7, 1995, the Office modified appellant's schedule award to find that appellant had a 34 percent loss of use of the left leg and a 34 percent loss of use of the right leg. The Office denied merit review of the claim on November 20, 1995.

The Board finds that appellant has not established that he has more than a 34 percent loss of use of each lower extremity

Section 8107 of the Federal Employees' Compensation Act provides that if there is a permanent impairment 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.<sup>2</sup> 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*

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<sup>1</sup> Docket No. 91-1623 (issued February 21, 1992).

<sup>2</sup> 5 U.S.C. § 8107.

*Evaluation of Permanent Impairment* as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>3</sup>

In support of an additional schedule award appellant submitted medical reports from Dr. Bradley T. Britt, his treating physician. In a report dated January 27, 1994, Dr. Britt stated that he had evaluated appellant for purposes of determining his permanent impairments of the legs. Dr. Britt stated that appellant had performance improvement plan fusion with very little MP motion of the left and right second toes, significant clawing and rigidity of the left third and fourth toes, rigid cavus deformity of the foot with great toe lacking in dorsiflexion, limited only to about 15 degrees in neutral and plantar flexion. Dorsiflexion of the ankle -- plantar flexion limited to 19 degrees, dorsiflexion to neutral or slightly above. Dr. Britt concluded that pursuant to the fourth edition of the A.M.A., *Guides* appellant had a 37 percent impairment to each "foot." The Board has held that if an examining physician does not use the A.M.A., *Guides* to calculate the degree of permanent impairment, it is proper for an Office medical adviser to review the record and apply the A.M.A., *Guides* to the examination findings reported by the examining physician.<sup>4</sup> Dr. Britt referred to the A.M.A., *Guides* in his reports, but did not explain fully how he calculated that appellant had a 37 percent impairment of each lower extremity, with specific reference to the A.M.A., *Guides* for each calculation.

In a report dated April 17, 1994, the Office medical adviser explained that appellant's loss of motion of the ankle was evaluated pursuant to Table 42, page 78 of the A.M.A., *Guides*, and that appellant had no impairment due to loss of dorsiflexion, but had a 7 percent impairment of each extremity due to loss of plantar flexion at 19 degrees. The medical adviser stated that appellant's toe impairments would be evaluated pursuant to Table 45, page 78 of the A.M.A., *Guides* and that appellant's great toe dorsiflexion loss would be a 5 percent impairment, plantar flexion loss would be a 2 percent impairment of each extremity. The loss of MP motion of appellant's second toe would result in a 2 percent impairment of each extremity and the significant clawing, rigidity and less than 10 degrees extension of the third and fourth toes equaled a 2 percent impairment for each toe, resulting in 4 percent impairments of each extremity. The medical adviser totaled appellant's impairment for loss of motion of each extremity at 20 percent. The medical adviser stated that appellant's pain complaints were of Class 3 severity, pursuant to Table 20, and that pursuant to figures 59 and Table 68 of the *Guides*, the maximum 5 percent impairment, multiplied by the 60 percent gradient for the Class 3 impairment resulted in 3 percent impairment for each heel and foot, resulting in a 6 percent impairment of each extremity for pain. Finally, the medical adviser stated that appellant had a diagnosis based impairment of the pes cavus of 7 percent for each extremity, resulting in an impairment of each extremity of 30 percent.

In a report dated December 6, 1994, Dr. Britt noted that the Office may have only calculated 30 percent bilateral impairments of appellant's legs instead of the 37 percent he had arrived at due to the 7 percent impairments he awarded for inversion and eversion loss. Dr. Britt stated that appellant had a moderate to severe inversion and eversion loss was calculated

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<sup>3</sup> *James J. Hjort*, 45 ECAB 595 (1994).

<sup>4</sup> *Lena P. Huntley*, 46 ECAB 643 (1995).

pursuant to Table 43, page 78 of the A.M.A., *Guides*. On March 2, 1995 the Office medical adviser again reviewed Dr. Britt's December 6, 1994 report and noted that Dr. Britt now reported a moderate to server inversion and eversion loss of both ankles. The medial adviser stated that appellant had a 7 percent permanent impairment of each lower extremity due to loss of range of motion, calculated pursuant to table 42, page 78 of the A.M.A., *Guides*, as moderate to severe inversions would be a 5 percent impairment and moderate to severe eversions would be a 2 percent impairment. The medical adviser stated that combining this additional loss of range of motion impairment with the previous rating, combined to impairment of each lower extremity of 34 percent. Finally, the medical adviser noted that the difference between his figure of 34 percent impairment and Dr. Britt's 37 percent impairment was due to Dr. Britt's failure to combine, rather than add the impairment values.

The Board has reviewed the calculations of the Office medical adviser and finds that the Office medical adviser properly calculated each of appellant's impairments pursuant to the A.M.A., *Guides* and properly concluded that appellant had a 34 percent impairment of each lower extremity.

The decisions of the Office of Workers' Compensation Programs dated November 25 and March 5, 1995 are hereby affirmed.

Dated, Washington, D.C.  
May 22, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member