

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT C. PONICHTERA and U.S. POSTAL SERVICE,
POST OFFICE, West Seneca, N.Y.

*Docket No. 96-1707; Submitted on the Record;
Issued May 22, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established a permanent impairment of his leg due to his fractured ankle, entitling him to a schedule award.

On February 9, 1993 appellant, then a 39-year-old letter carrier, sustained a right ankle fracture when he slipped on ice while delivering mail. Appellant was treated by Dr. John Haumesser, an orthopedic surgeon, who performed surgery on February 10, 1993 and placed a cast on appellant. Based on reports from Dr. Haumesser, the Office of Workers' Compensation Programs accepted appellant's claim for a fracture of the right ankle and authorized appropriate compensation benefits.

Appellant remained off work until June 1, 1993, when he returned to limited mail delivery duties consisting of two hours per day. After two weeks, he returned to his regular delivery duties of four hours per day, together with other clerk-related duties. Dr. Haumesser released appellant from his care on July 15, 1993, noting that appellant was still continuing with physical therapy, which he had begun mid-April 1993. The physical therapy treatment notes from April until June 1993 showed that appellant's range of motion had increased but that his range of motion was still compromised on dorsiflexion.

Based on a claim on account of continuing compensation (Form CA-7) by which appellant specified his request for wage-loss compensation for the period prior to his return to work, the Office paid appellant wage-loss compensation.

Subsequently appellant requested a schedule award, noting that he felt he had submitted an earlier Form CA-7 requesting such. In May 1994 appellant submitted a new Form CA-7, by which he requested a schedule award and he attached an attending physician's report dated April 6, 1994 by Dr. Haumesser. An Office medical adviser who reviewed the report indicated a lack of findings and recommended that the appropriate worksheet be provided to Dr. Haumesser, for correlation of the medical findings to the American Medical Association, *Guides to the*

*Evaluation of Permanent Impairment.*¹ Accordingly, in December 1994 the Office provided appellant with a worksheet to be completed by Dr. Haumesser, for correlation of his findings with the A.M.A., *Guides*. Appellant returned the completed questionnaire signed by Dr. Haumesser, to the Office. In the questionnaire, Dr. Haumesser reported that appellant reached maximum medical improvement on January 1, 1994, that he was fairly comfortable and that he lacked 5 degrees with respect to range of motion on dorsiflexion of the right ankle as compared to the left. Three months later appellant indicated that he had black spots on his legs and was provided with support hose. While he provided a February 21, 1995 treatment note from Dr. Haumesser, who recommended the hose, Dr. Haumesser noted a lack of significant swelling at the time of evaluation.

No action was taken on appellant's request for a schedule award until the following year, when an Office medical adviser reviewed the medical evidence on April 22, 1996. The Office medical adviser indicated a lack of sufficient information to assess the degree of impairment due to the fractured ankle.

By decision dated May 2, 1996, the Office denied appellant's request for a schedule award.

The Board finds that appellant has not established permanent impairment of his leg due to his fractured ankle, entitling him to a schedule award.

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The Office has adopted the A.M.A., *Guides* and the Board has concurred in such adoption as an appropriate standard for evaluating schedule losses.⁴

In rating the impairment of a member, a description of impairment should be obtained from the treating physician which includes, where applicable, the loss of degree of active and passive motion of the affected member, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of impairment. The description must be in sufficient detail so that the claims examiner and others reviewing the file

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) (hereinafter A.M.A., *Guides*).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

⁴ See *Danniel C. Goings*, 37 ECAB 781 (1986). Under the A.M.A., *Guides*, measurements of loss of range of motion, as well as other factors such as pain or loss of strength, are correlated to specific tables and charts, specifying the degree of impairment to an extremity. A.M.A., *Guides* 75-78 (4th ed. 1993).

will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁵ In this case, while appellant maintains that he continues to have instability from the hardware inside his ankle, Dr. Haumesser reported in December 1994 that appellant was fairly comfortable and reported no impairment due to pain, loss of sensation, or decreased strength. He noted on the form he completed that he used the New York State Workers' Compensation Board Guide, instead of the A.M.A., *Guides*. Dr. Haumesser did not provide a full description of range of motion measurements or other measurements to be correlated to the A.M.A., *Guides*, used by the Office. While he provided one measurement of range of motion, namely the range of motion on dorsiflexion of the ankle, this measurement by itself does not sufficiently establish impairment of the leg as a result of the ankle injury. Because appellant did not provide a full report detailing the extent of his impairment with findings to correlate to the A.M.A., *Guides*, he has failed to establish his claim for permanent impairment of the right leg.

The decision of the Office of Workers' Compensation Program dated May 2, 1996 is hereby affirmed.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁵ *Robert B. Rozelle*, 44 ECAB 616 (1993).