

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSEPHINE A. JOHNSON and U.S. POSTAL SERVICE,  
POST OFFICE, Chicago, Ill.

*Docket No. 97-2152; Submitted on the Record;  
Issued October 16, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has established that she has greater than a four percent permanent impairment of each foot, for which she has received two schedule awards.

On September 2, 1993 appellant, then a 52-year-old accounting technician, filed a claim alleging that she sustained a left foot injury on September 1, 1993 when she fell at work. Appellant stopped work on September 7, 1993 and received continuation of pay from that date through October 21, 1993.

On November 22, 1993 the Office of Workers' Compensation Programs accepted that appellant had sustained a fractured fifth metatarsal of her left foot, and paid benefits for temporary total disability commencing October 22, 1993. Thereafter, on February 14, 1995 the Office accepted that appellant had also sustained a fractured fifth metatarsal of the right foot as a consequence of her left foot injury and paid benefits for periods of temporary total disability commencing November 12, 1994.

In an October 1, 1996 response to an inquiry from appellant regarding her possible entitlement to a schedule award, the Office informed appellant of the type of medical evidence necessary to establish the extent of her claimed permanent impairment. On December 13, 1996 the Office received an undated schedule award report from Dr. George B. Holmes, Jr., appellant's attending Board-certified orthopedic surgeon. Dr. Holmes indicated that appellant had normal ranges of motion of both feet and all of her toes with no loss of function due to weakness, atrophy or additional factors. Dr. Holmes stated, however, that appellant had pain and discomfort over the fifth metatarsal bases with weightbearing without other sensory loss such as causalgia.

Following receipt of Dr. Holmes' report, the Office referred appellant's case record to an Office medical adviser for an opinion regarding the extent of appellant's permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent*

*Impairment.* In reports dated January 12 and April 5, 1997, the Office medical adviser reviewed the submissions from Dr. Holmes, initially calculated appellant's lower extremity impairments, and then concluded that appellant had a four percent permanent impairment of each foot due to Grade 3 dysesthesias in the sural nerve distributions using Table 68 on page 89 of the A.M.A., *Guides*. He calculated the impairments as 60 percent of the maximum allowable 7 percent impairment for each foot which equaled 4 percent. The Office medical adviser also concluded that the date of maximum medical improvement was April 7, 1994 for appellant's left foot and June 1, 1996 for her right foot.

On May 2, 1997 the Office granted appellant two separate schedule awards; one for a four percent impairment of her right foot, and another for a four percent impairment of her left foot.

The Board finds that appellant has no more than a four percent impairment of each foot, for which she has received schedule awards.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> specify the number of weeks of compensation to be paid for permanent loss of use of various members of the body. The Act does not, however, specify the manner in which the percentage loss of use of a member shall be determined. The method used in making such a determination is a matter that rests with the sound discretion of the Office.<sup>2</sup> 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.<sup>3</sup> The Office has adopted the A.M.A., *Guides* as the standard for evaluating permanent impairment for schedule award purposes and the Board has concurred with the Office's adoption of this standard.<sup>4</sup>

The A.M.A., *Guides* standards for evaluating the impairment of extremities are based primarily on loss of range of motion.<sup>5</sup> However, all factors that prevent a limb from functioning normally, including pain or discomfort, should be considered, together with loss of motion, in evaluating the degree of permanent impairment.<sup>6</sup> In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

<sup>3</sup> *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

<sup>4</sup> *Donald Mueller*, 32 ECAB 324 (1980); *Anne E. Hughes*, 27 ECAB 106 (1975); *Theodore P. Richardson*, 25 ECAB 113 (1973).

<sup>5</sup> See *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

<sup>6</sup> See *Paul A. Toms*, 28 ECAB 403 (1987).

stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.<sup>7</sup> Dr. Holmes reported no such losses in this case. However, all factors that prevent a limb from functioning normally should be considered, together with the loss of motion, in evaluating the degree of permanent impairment. The A.M.A., *Guides* provides a grading scheme and procedure for determining impairment of an affected body part due to pain, discomfort, or loss of sensation.<sup>8</sup> The element of pain may serve as the sole basis for determining the degree of impairment for schedule compensation purposes.<sup>9</sup> The element of pain as it affects the sural nerve distribution serves as the sole basis for the schedule awards granted in this case.

In the report received on December 13, 1996, Dr. Holmes noted that ranges of motion of the toes and the feet in full extension and flexion were normal, and he found that appellant's functional abilities showed no impairment whatsoever from weakness and atrophy. However, his findings did include pain and discomfort on weightbearing without any other sensory loss. As Dr. Holmes's report contained a complete description of the pain and discomfort that appellant reported on examination, the Office properly referred this report to an Office medical adviser, in accordance with Chapter 2.808.6(d) of the Office's Federal (FECA) Procedure Manual for a computation of impairment using the standards found in the A.M.A., *Guides*.<sup>10</sup>

The Office medical adviser reviewed Dr. Holmes's report and indicated that appellant had no impairment of either foot due to loss of range of motion. Indeed, Dr. Holmes found normal range of motion and no impairment whatsoever in appellant's functional abilities. The Office medical adviser then properly applied the grading scheme and procedure found in the A.M.A., *Guides* for determining the impairment of an affected body part due to pain, discomfort, or loss of sensation. He identified the area of involvement, and identified the innervating nerve as the sural nerve. The Office medical adviser then noted that the maximum impairment of appellant's feet allowable for peripheral nerve deficits was 7 percent for each foot, using Table 68 on page 89. The Office medical adviser then concluded that appellant had a Grade 3 impairment rating based on dysesthesias of each foot, for a maximum 60 percent impairment of each foot, and that 7 percent multiplied by 60 percent equaled a 4 percent (rounded off) impairment of each foot.<sup>11</sup> The adviser also concluded that the date of maximum medical improvement was April 7, 1994 for appellant's left foot and June 1, 1996 for her right foot.

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<sup>7</sup> *Supra* note 5.

<sup>8</sup> A.M.A., *Guides* 303 (4th ed. 1993).

<sup>9</sup> *Paul A. Toms, supra* note 6; *Robin L. McClain*, 38 ECAB 398 (1987).

<sup>10</sup> *See James E. Jenkins*, 39 ECAB 860 (1988). Further, Chapters 1 and 2 of the A.M.A., *Guides* note that they were prepared to allow one physician to use the raw clinical data of another physician to arrive at a uniform standardized evaluation.

<sup>11</sup> Although the Office medical adviser used Table 11 on page 48 of the A.M.A., *Guides* instead of Table 20 on page 151 to determine appellant's impairment ratings, this was harmless error since the two Tables are the same in content.

As appellant submitted no other probative medical evidence demonstrating that she had permanent impairment of each foot greater than four percent, the Office medical adviser's reports are the only evaluations of record of appellant's permanent impairments that conform with the A.M.A., *Guides*, and the Board finds that they constitute the weight of the medical evidence in the case record and establish that appellant has no more than a four percent permanent impairment of each foot.<sup>12</sup>

Accordingly, the decisions of the Office of Workers' Compensation Programs dated May 2, 1997 are hereby affirmed.

Dated, Washington, D.C.  
October 16, 1998

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>12</sup> See *Thomas P. Gauthier*, 34 ECAB 1060 (1983).