

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE LINGENFELSER and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Philadelphia, Pa.

*Docket No. 96-2487; Submitted on the Record;
Issued September 3, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 5 percent permanent impairment to his left leg.

In the present case that Office of Workers' Compensation Programs accepted that appellant sustained a fracture of the left foot in the performance of duty on September 27, 1992.(nfs) By decision dated September 19, 1995, appellant received a schedule award for a 5 percent permanent impairment to the left leg. In a decision dated July 19, 1996, an Office hearing representative affirmed the schedule award.

The Board has reviewed the record and finds that the case is not in posture for decision.

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

The record contains a form report dated March 11, 1994 from Dr. Alan Mlodzienski, a podiatrist, recommending an impairment rating of 80 percent of the left lower extremity. In the absence of a detailed description of appellant's impairment, this report is of little probative

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).

value. The Office referred appellant for examination by Dr. Richard L. Band, an orthopedic surgeon. In a report dated June 16, 1994, Dr. Band indicated that appellant “has some decreased sensation of the lateral border of the foot, some persistent swelling on the dorsum of the foot, and diminished ability to plantar flex the small toes. This would amount to 5 to 10 percent disability of the left foot.” Dr. Band did not provide any reference to the *Guides* or otherwise explain his impairment rating. The Board finds that Dr. Band’s report is also of little probative value to the issue presented.

The Office then referred appellant for examination by Dr. John T. Williams, an orthopedic surgeon.³ In a report dated May 9, 1995, Dr. Williams provided a history and results on examination. Dr. Williams indicated that appellant had a slight loss of range of motion in the ankle, “a loss of about a grade on the motor of his toes, *i.e.*, the intrinsic and he has some weakness of his toe extensors also. There is some decrease in the sensation distal to the injury, but overall, this patient in my opinion has had what I consider to be a good result.” He stated that according to the third edition of the *Guides*, appellant had an impairment of approximately five percent, based on the loss of ankle range of motion. The Board notes that the third edition was not the proper edition to evaluate appellant’s impairment;⁴ in addition, Dr. Williams does not explain whether the motor impairment or the decreased sensation would result in an impairment under the *Guides*.

In a brief memorandum dated July 5, 1995, an Office medical adviser stated that he agreed with Dr. Williams that appellant had a 5 percent impairment to the left leg. The medical adviser, however, refers only to Table 42 and 43 of the 4th edition of the *Guides*, and he indicates that under those tables the reported loss of range of motion for the ankle and foot would not result in a ratable impairment.⁵

The Board finds that the medical evidence from Dr. Williams and the Office medical adviser is not sufficient to establish the degree of permanent impairment in the left leg under the *Guides*. The reports do not contain a detailed description of the impairment and a clear explanation as to how the percentage of impairment was calculated. It is also noted that appellant submitted a May 21, 1996 report from Dr. Mlodzienski, who stated that under the *Guides* appellant had an impairment from gait derangement resulting in a 15 percent whole person

³ The hearing representative stated in his July 19, 1996 decision that Dr. Williams was an impartial specialist selected to resolve a conflict in the medical evidence. The prior reports, however, were of such limited probative value that a conflict could not be created under 5 U.S.C. § 8123(a). Dr. Williams therefore is considered a second opinion referral physician.

⁴ The 4th ed. was to be used for permanent impairment calculations as of November 1, 1993. FECA Bulletin No. 94-4 (November 1, 1993).

⁵ A.M.A., *Guides* 78, (4th ed. 1993).

impairment.⁶ None of the other physicians of record discussed gait derangement in calculating permanent impairment.

Since the physicians of record have made a number of findings on examination which are relevant to the degree of permanent impairment, such as decreased sensation, motor weakness, loss of range of motion in the ankle and toes, as well as gait derangement, the case will be remanded to the Office for further development of the medical evidence. On remand the Office should secure medical evidence that discusses all of the above factors and contains a reasoned opinion as to the degree of permanent impairment under the *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated July 19, 1996 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
September 3, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ A.M.A., *Guides*, 76, Table 36, provides impairments due to gait derangement, which represents an alternative method of determining lower extremity impairments which is not to be combined with other methods. Although the impairment is given as a whole person impairment, it appears that a lower extremity impairment can be calculated using the formula provided at page 75.