

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSEPH MARCOUX and U.S. POSTAL SERVICE,  
POST OFFICE, Groton, Conn.

*Docket No. 97-387; Submitted on the Record;  
Issued September 18, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether appellant has more than a three percent impairment of the left lower extremity for which he received a schedule award.

The Office of Worker's Compensation Programs accepted appellant's claim for a dog bite on the left ankle and leg occurring on August 18, 1994. On April 4, 1995 appellant filed a claim for a schedule award.

By letter dated April 20, 1995, the Office requested that Dr. Laurence I. Radin, a Board-certified neurologist and appellant's attending physician, evaluate appellant to determine the extent of any permanent impairment to the lower left extremity caused by the accepted employment injury. The Office informed Dr. Radin that it used the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993) as its standard for rating impairment.

In a report dated May 30, 1995, Dr. Radin indicated that appellant reached maximum medical improvement on January 1, 1995. He obtained the following range of motion findings for appellant's left ankle: 60 degrees dorsi-plantar flexion; 50 degrees plantar flexion, 50 degrees inversion, and 30 degrees eversion. He found that appellant had full range of motion<sup>1</sup> and no ankylosis. Dr. Radin concluded that appellant had a 10 percent impairment of the left lower extremity due to pain.

In a report dated June 22, 1995, an Office medical adviser reviewed Dr. Radin's May 30, 1995 report and determined that, according to Table 68 on page 89 of the A.M.A., *Guides*, the maximum impairment of the lower extremity due to a deficit in the medial plantar nerve was 5 percent. He noted that appellant's subjective complaints prevented certain activities and would be graded as a maximal 60 percent grade impairment due to pain according to Table 11 on page

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<sup>1</sup> A.M.A., *Guides* 78, Table 42.

48. The Office medical adviser calculated that the maximum 5 percent impairment due to a deficit in the medial plantar nerve multiplied by the 60 percent impairment grade due to pain yielded a 3 percent impairment of the left lower extremity. He further found that appellant reached maximum medical improvement on October 19, 1994.

By decision dated July 19, 1995, the Office granted appellant a schedule award for a three percent impairment of the left leg. The period of the award ran for 8.64 weeks from October 19 to December 18, 1994.

By letter dated July 25, 1995, appellant requested a hearing before an Office hearing representative.

In a report dated May 7, 1996, Dr. Radin found that appellant had “a significant loss of range of motion in the ankle.” He stated that, according to Table 42 on page 76 of the A.M.A., *Guides*, appellant had a 6 percent impairment to the whole person for loss of range of motion, which when multiplied by a 1 percent impairment to the whole person due to pain yielded a 7 percent whole person impairment.

By decision dated June 5 and finalized June 6, 1996, the Office hearing representative affirmed the Office’s July 19, 1995 decision.

By letter dated June 18, 1996, appellant, through his representative, requested reconsideration of the claim. Appellant argued that the hearing representative had not reviewed Dr. Radin’s May 7, 1996 report in rendering his June 5, 1996 decision.

In a report dated September 25, 1996, an Office medical adviser reviewed Dr. Radin’s May 7, 1996 report and found that his opinion that appellant now had a significant loss of range of motion in his left ankle was “at variance from his previous examination on May 30, 1995 when range of motion of the left ankle was described in detail and was normal.” He opined that the Office had correctly awarded appellant a three percent impairment of the left lower extremity.

By decision dated September 26, 1996, the Office denied modification of the prior decisions.

The Board finds that appellant has no more than a three percent impairment of the left lower extremity for which he received a schedule award.

Under section 8107 of the Federal Employees’ Compensation Act,<sup>2</sup> and section 10.304 of the implementing federal regulations,<sup>3</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.304.

necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>4</sup>

Dr. Radin, a Board-certified neurologist and appellant's attending physician, found in a report dated May 30, 1995 that appellant had a 10 percent impairment of his left lower extremity due to pain. He further indicated that appellant had full range of motion of his ankle. Dr. Radin, however, did not specifically refer to the appropriate pages and tables of the A.M.A., *Guides* in reaching his impairment rating.

The Office medical adviser, on the other hand, appropriately applied the A.M.A., *Guides* to Dr. Radin's clinical findings. The Office medical adviser determined that, according to Table 68 on page 89 of the A.M.A., *Guides*, the maximum impairment of the lower extremity due to a deficit in the medial plantar nerve was 5 percent. He noted that appellant's subjective complaints prevented certain activities and would be graded as a maximal 60 percent grade impairment due to pain according to Table 11 on page 48. The Office medical adviser properly calculated that the maximum 5 percent impairment due to a deficit in the medial plantar nerve multiplied by the 60 percent impairment grade due to pain yielded a 3 percent impairment of the left lower extremity.

In a report dated May 7, 1996, Dr. Radin opined that appellant had a significant loss of range of motion of the ankle which would constitute a six percent whole person impairment and a one percent whole person impairment due to pain. However, the Act does not provide a schedule award for a whole person impairment, and thus Dr. Radin's report is of little probative value.<sup>5</sup> Further, Dr. Radin provided no explanation for his opinion that appellant now has a loss of range of motion in his ankle in view of his previous determination that appellant had no impairment due to loss of range of motion.

Accordingly, the Board finds that the weight of the medical evidence, based on the impairment determination of the Office medical adviser, establishes that appellant has no more than a three percent impairment of the left lower extremity.

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<sup>4</sup> *James J. Hjort*, 45 ECAB 595 (1994).

<sup>5</sup> 5 U.S.C. § 8107(c).

The decisions of the Office of Workers' Compensation Programs dated September 26 and June 5, 1996 and finalized June 6, 1996 are hereby affirmed.

Dated, Washington, D.C.  
September 18, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member