

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT J. BIERMANN and U.S. POSTAL SERVICE ,  
POST OFFICE, Chester, IL

*Docket No. 98-963; Submitted on the Record;  
Issued December 17, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has established more than a one percent permanent impairment to both legs.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained Morton's neuroma of both feet causally related to factors of his federal employment. In a decision dated May 30, 1996, the Office issued a schedule award for a one percent permanent impairment to both the left and right legs. By decision dated November 3, 1997, an Office hearing representative affirmed the May 30, 1996 decision.

The Board has reviewed the record and finds that appellant has not established more than a one percent permanent impairment to both legs.

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.<sup>1</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's *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>2</sup>

In this case, appellant submitted a narrative report dated August 18, 1997, from Dr. Christopher Dugan, a podiatrist and a Form CA-1303 report from Dr. Dugan recommending

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<sup>1</sup> 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).

<sup>2</sup> A. George Lampo, 45 ECAB 441 (1994).

an impairment rating of five percent for both the right and left leg. He does not, however, explain in either report how the five percent figure was calculated. Dr. Dugan reported numbness and dyesthesias in the plantar aspect of the metatarsal area, more on the right than the left. An Office medical adviser reviewed the record and in an October 20, 1997 report, the medical adviser noted that Table 68 of the A.M.A., *Guides* was the applicable table for lower extremity nerve deficits.<sup>3</sup> The medical adviser indicated that the maximum impairment for nerve deficits in the medial plantar nerve was five percent, but there was no indication in the medical evidence that the entire medial plantar nerve was involved. The medical adviser opined that one percent was a reasonable estimate of the nerve deficit that existed. This is in accord with an earlier opinion of an attending physician, Dr. William K. Harryman, an orthopedic surgeon, and a prior opinion from an Office medical adviser.

In the absence of a reasoned opinion from Dr. Dugan as to how the five percent figure was calculated, the Board finds that the weight of the medical evidence does not establish more than a one percent impairment to both legs.

The decision of the Office of Workers' Compensation Programs dated November 3, 1997 is affirmed.

Dated, Washington, D.C.  
December 17, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>3</sup> A.M.A., *Guides* (4th ed. 1993), 89, Table 68.