

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA A. WILLIAMS and DEPARTMENT OF DEFENSE,
DEFENSE LOGISTICS CENTER, Stockton, Calif.

*Docket No. 97-1524; Submitted on the Record;
Issued January 12, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that she is entitled to a schedule award pursuant to section 8107 of the Federal Employees' Compensation Act.

Section 8107 of the Act¹ provides that if there is a permanent impairment 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. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants in the evaluation of permanent physical impairment. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office of Workers' Compensation Programs as a standard for evaluating schedule losses and the Board has concurred in such adoption.²

In the present case, the Office has accepted that appellant, a packer, sustained bilateral Morton's neuroma and metatarsal osteotomy of the feet as a result of standing and walking in her federal employment on or about January 1, 1995. On May 29, 1996 appellant filed a claim for a schedule award.

On June 3, 1996 the Office advised appellant's treating physician, Dr. Glen Feeback, that an assessment of appellant's permanent impairment was required. The Office further advised Dr. Feeback that it was necessary that he determine appellant's permanent impairment pursuant to the A.M.A., *Guides*, and that he describe appellant's impairment and advise how he calculated the degree of impairment pursuant to the applicable tables in the A.M.A., *Guides*. The Office received from Dr. Feeback a May 16, 1996 attending physician's report wherein he noted appellant's diagnoses and indicated that appellant had a 12 percent disability rating. The Office

¹ 5 U.S.C. § 8107.

² *James J. Hjort*, 45 ECAB 595 (1994).

also received an August 29, 1996 report from Dr. Feedback wherein he noted that appellant had received maximum medical improvement approximately three or four months prior to this date, and provided his general impressions regarding appellant's permanent impairment. Dr. Feedback described appellant's impairment by stating that appellant still had pain and discomfort under the metatarsophalangeal joint (MPJ) area, with some neuroma-type pain in the second interspace which presented numbness and parasthesia. He noted that appellant had pain upon palpation of the MPJ area and some osteoarthritic changes due to the surgery itself. Dr. Feedback noted that appellant had decreased range of motion in the second and third MPJs bilaterally, and that appellant had decreased dorsiflexion and plantar flexion, with limited first MPJ range of motion, significantly more than the fibular third. He did not indicate whether his findings were bilateral. Dr. Feedback concluded that appellant had a seven percent permanent impairment of both the second and third metatarsal bilaterally due to loss of range of motion, pursuant to the A.M.A., *Guides*.

On September 27, 1996 an Office medical adviser reviewed Dr. Feedback's report and advised that he was unable to locate his range of motion measurements and was unable to determine how Dr. Feedback arrived at his impairment figures from the A.M.A., *Guides*.

The Office denied appellant's claim for a schedule award by decisions dated August 6 and September 30, 1996. The Office denied appellant's application for review on December 3, 1996.

The Board finds that appellant has not established that she has a permanent impairment of the lower extremities that would entitle her to a schedule award under section 8107 of the Act.

An employee seeking compensation under the Act³ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.⁴ In order to meet her burden, appellant must submit sufficient medical evidence to show a permanent impairment causally related to employment that is ratable under the A.M.A., *Guides*. The Office's procedures discuss the type of evidence required to support a schedule award. The evidence must show that the impairment has reached a permanent and fixed state and indicate the date this occurred, describe the impairment in detail and contain an evaluation of the impairment under the A.M.A., *Guides*.⁵

In the present case, appellant has not submitted sufficient medical evidence to show entitlement to a schedule award, as Dr. Feedback failed to follow the Office's instruction to correlate his impairment rating to the A.M.A., *Guides*. While Dr. Feedback noted that appellant had residual pain and loss of motion, he did not describe appellant's impairment in a manner in which the impairment could be visualized or calculated pursuant to the A.M.A., *Guides*. As noted by the Office medical adviser, although Dr. Feedback was requested to evaluate appellant's permanent impairment pursuant to the A.M.A., *Guides*, his reports did not provide the essential

³ 5 U.S.C. §§ 8101-8193.

⁴ See generally Gary Fowler, 45 ECAB 365 (1994).

⁵ Federal (FECA) Procedure Manual, Part 2 -- *Claims*, Chapter 2.808.6 (March 1995).

evidence necessary to determine whether appellant in fact had a permanent impairment which was ratable pursuant to the A.M.A., *Guides*.

The evidence submitted does not establish entitlement to a schedule award under 5 U.S.C. § 8107. Appellant therefore did not meet her burden of proof to establish entitlement to a schedule award.

The decisions of the Office of Workers' Compensation Programs dated December 3, September 30 and August 6, 1996 are hereby affirmed.

Dated, Washington, D.C.
January 12, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member