

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GRETA L. KINCADE and U.S. POSTAL SERVICE,
POST OFFICE, Kansas City, Mo.

*Docket No. 97-2002; Submitted on the Record;
Issued July 14, 1999*

DECISION and ORDER

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

The issue is whether appellant has greater than a two percent permanent loss of use of her left leg.

The Office of Workers' Compensation Programs accepted that appellant sustained a fracture of the left fibula in a May 17, 1995 employment injury. Surgery was performed on appellant's left ankle on May 31, 1995 and hardware was removed on September 29, 1995. Appellant received continuation of pay followed by compensation for temporary total disability from May 18, 1995 until she returned to limited duty on July 24, 1995.

On September 23, 1996 appellant filed a claim for a schedule award. The Office referred appellant and her prior medical records to Dr. George Varghese, a Board-certified physiatrist, for an evaluation of any permanent impairment. In a report dated January 14, 1997, Dr. Varghese stated:

“Examination of the left ankle showed no swelling. There is no hyperesthesia or any vasomotor changes. She has a well-healed scar along the lateral side of the lateral malleolus. There are no findings suggestive of reflex sympathetic dystrophy. Range of motion was measured with a goniometer. Plantar flexion was 30 degrees, dorsiflexion was 15 degrees. Inversion was 25 degrees and eversion was 15 degrees. Strength in dorsiflexion, plantar flexion, inversion, eversion were within normal limits. There was no evidence of any instability at the ankle joint or subtalar level. Her gait was unremarkable....

“It is my opinion that [appellant] has reached maximum medical improvement from the injury to the ankle sustained in [May 1995]. As you requested, I have done a permanent partial impairment rating. I used [American Medical Association], *Guides to the Evaluation of Permanent Impairment*, Fourth Edition, published by the A.M.A., for this calculation. The following factors were taken

into consideration: (1) Range of motion. No limitation of range of motion was detected, hence no rating was given. (2) Strength. Strength was normal and no rating was given. (3) Pain or sensory deficit. She has some residual stiffness and discomfort, especially with prolonged walking, but this does not seem to interfere with any of her activities. Also, from the history, it appears that she is able to do all the activities that she did before the injury. Using Table 20, on page 151, I gave her a 30 [percent] grade for this. Since the pain is in a sural nerve distribution, using Table 68, this is converted to 1.5 which is corrected to 2 [percent]. In summary, her permanent partial impairment to her left lower extremity from residual deficits from the injury sustained in May 1995 is [two] [percent].”

An Office medical adviser reviewed Dr. Varghese’s January 14, 1997 report and stated that it was correct based on the A.M.A., *Guides*.

On February 28, 1997 the Office issued appellant a schedule award for a two percent permanent loss of use of the left leg.

The Board finds that the evidence establishes that appellant has no greater than a two percent permanent loss of use of the left leg.

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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. The A.M.A., *Guides* has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

The case record contains only one evaluation of appellant’s permanent impairment.⁴ In this report Dr. Varghese, a Board-certified physiatrist, rated appellant’s permanent impairment of the left leg at two percent, using the A.M.A., *Guides* and taking into consideration the relevant factors: range of motion, sensory deficit, strength, pain and stability. An Office medical adviser reviewed this report and concluded that it correctly rated appellant’s leg impairment at two percent using the A.M.A., *Guides*. The Board agrees.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ *Quincy E. Malone*, 31 ECAB 846 (1980).

⁴ On appeal, appellant submitted an April 21, 1997 evaluation of her permanent impairment from her attending physician. Although this evidence could be considered by the Office in conjunction with a request for reconsideration, it cannot be considered by the Board on appeal, as the Board’s review is limited by 20 C.F.R. § 501.2(c) to “the evidence in the case record which was before the Office at the time of its final decision.”

The decision of the Office of Workers' Compensation Programs February 28, 1997 is affirmed.

Dated, Washington, D.C.
July 14, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member