U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORETTA J. JACOBS and DEPARTMENT OF THE AIR FORCE, TACTICAL AIR COMMAND, NELLIS AIR FORCE BASE, NV

Docket No. 97-2596; Submitted on the Record;
Issued July 23, 1999

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established entitlement to greater than a 21 percent schedule award for her right lower extremity.

The Board has duly reviewed the case record and concludes that appellant has no greater than a 21 percent permanent impairment of the right lower extremity.

On December 4, 1996 appellant, then a 53-year-old recreation specialist, sustained a right ankle fracture while in the performance of duty. By decision dated July 23, 1997, the Office of Workers' Compensation Programs granted her an award for a 21 percent permanent impairment for loss of use of the right lower extremity for the period June 19, 1997 to August 16, 1998 for a total of 60.48 weeks of compensation.

Under section 8107 of the Federal Employees'Compensation Act[1] and section 10.304 of the implementing federal regulations,[2] 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 necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*[3] (hereinafter 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.[4]

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[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.304.

[3] A.M.A., *Guides*, (4th ed. 1993).

[4] *See James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*,

In a medical report dated June 22, 1997, Dr. Jerrold M. Sherman, appellant's treating physician, Board-certified in orthopedic surgery, found that appellant's right leg had "obvious swelling of the right ankle and foot," that the right calf was a ½ inch narrower than the left calf and the right ankle was 1¼ inch greater than the left ankle. Right ankle flexes were from minus 15 degrees to 30 degrees of flexion and no inversion or eversion of the right subtalar joint. He also noted that pronation and supination of the right foot were limited by 50 percent, and that there was normal sensation in the right foot and tenderness in the right ankle, particularly around the scar over the lateral malleolus. Dr. Sherman stated that appellant had status post trimalleolar fracture right ankle; fracture treated with open reduction; internal fixation of the lateral malleolus now with persistent, painful limited motion of the right ankle and foot with residual pain and swelling about the ankle. Regarding appellant's subjective complaints of pain, Dr. Sherman related that appellant had pain for "approximately one half of the waking day," and had "limited motion which prevents her from squatting." He noted that she must rest "after two blocks," and had pain when pressure was applied to the lateral aspects of the ankle at night and cold weather, had difficulty going up and down stairs and pain around the ankle and calf at night sufficient to wake her up. Using the A.M.A., *Guides* (4th ed. 1993), Dr. Sherman found that appellant had a mild muscle wasting of the right calf which was calculated at 8 percent permanent impairment of the right lower extremity, severe hind foot restriction of motion "best characterized as severe" which he calculated at 5 percent lower extremity impairment and a moderate ankle motion impairment which he rated at 15 percent lower extremity impairment. He also noted that appellant had a 10 percent whole person impairment as a result of her fracture and treatment for the right ankle injury. He noted that the rating was higher than that which was listed in the A.M.A., *Guides* because of the pain and swelling associated with appellant's limited motion of the right ankle.

In a medical form dated June 22, 1997, Dr. Sherman noted that appellant had reached maximum medical improvement on June 19, 1997. He noted also that appellant's range of motion of dorsi-plantar flexion was to minus 15 degrees and plantar flexion to 30 degrees. Dr. Sherman noted zero degrees inversion and eversion. He further noted an additional impairment of function due to pain estimated at 10 percent and recommended an impairment rating of 28 percent of the right lower extremity.

In a July 10, 1997 report, the Office medical consultant recommended an impairment rating of 21 percent. The consultant noted the treating physician's description of appellant's subjective complaints of pain, *i.e.*, as pain that may interfere with activity, described as constant and moderate, as grade III as found in the A.M.A., *Guides.* Dr. Sherman stated that this was 60 percent of 10 percent impairment of the sural and common peroneal nerves for a 6 percent impairment due to loss of function due to pain. Dr. Sherman also noted "some limitation of ankle motion, range of motion described as minus 15 degrees extension with plantar flexion to 30 degrees" which he considered mild, or equal to a 7 percent lower extremity impairment. Dr. Sherman also noted that the record reflected no subtalar motion which he noted was rated as moderate to severe at 5 percent lower extremity impairment. Dr. Sherman further noted that the right calf was a half inch smaller than the left calf which was considered mild or a 5 percent

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38 ECAB 168 (1986).

lower extremity impairment. He then used the Combined Values Chart and combined 6 percent for pain factors, 7 percent for loss of ankle motion, 5 percent for loss of subtalar motion and 5 percent for calf atrophy to find a 21 percent right lower extremity impairment.

On July 23, 1997 the Office awarded appellant a 21 percent permanent impairment of the right lower extremity.

In the present case, in reviewing the calculations of record, the Board concludes that the Office medical consultant properly calculated that appellant had a 21 percent impairment of the right lower extremity.

The Office medical consultant, Dr. Leonard A. Simpson, utilized the description of appellant's impairment provided by Dr. Sherman and noted that appellant did have loss of minus 15 degrees extension with plantar flexion to 30 degrees. Utilizing Table 42 of the A.M.A., *Guides*,[5] Dr. Simpson properly calculated that this loss of motion would be equivalent to a total of 7 percent impairment. Utilizing Table 43 of the *Guides*,[6] Dr. Simpson determined that no subtalar motion would be the equivalent of 5 percent right lower impairment. He also determined that appellant's right calf atrophy of ½ inch was the equivalent of a 5 percent right lower extremity impairment. Noting appellant's complaints of weakness and pain, Dr. Simpson utilized Table 68[7] to calculate appellant's impairment due to these factors. Dr. Simpson noted that appellant had involvement of the sural and peroneal nerve, which was 60 percent grade of a maximal 10 percent for a 6 percent impairment due to pain. Utilizing the Combined Values Chart,[8] Dr. Simpson thereafter properly found that combination of the 7 percent impairment due to loss of motion, the 5 percent impairment due to loss of subtalar motion, the 6 percent impairment due to pain and the 5 percent impairment due to right calf atrophy resulted in a total impairment of 21 percent.

The Board finds that the Office properly relied on the recommendations of the Office medical consultant. While Dr. Sherman advised that he also utilized the fourth edition of the A.M.A., *Guides* in determining that appellant had a 28 percent impairment, his opinion is of diminished probative value as he did not refer to specific tables or indicate whether he relied on the Combined Values Chart in his rating. As it is appellant's burden to submit sufficient evidence to establish his claim,[9] the Board finds that the Office permissibly followed the advice of its medical consultant in granting appellant a schedule award for a 21 percent permanent impairment of the right lower extremity.

[5] A.M.A., *Guides*, page 78.

[6] *Id*. at 78.

[7] *Id*. at 89; *see also* 48, Table 11.

[8] *Id*. at 322.

[9] *See Annette M. Dent*, 44 ECAB 403 (1993).

The July 23, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.[10]

Dated, Washington, D.C.
July 23, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] The Board notes that, subsequent to the Office's July 10, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).