

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND J. ANTHONY and U.S. POSTAL SERVICE,
POST OFFICE, Bell Mawr, N.J.

*Docket No. 97-1980; Submitted on the Record;
Issued June 2, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he has greater than an 11 percent permanent impairment for loss of use of the left leg, for which he received a schedule award.

On November 12, 1992 appellant, a 44-year-old letter carrier, injured his left ankle when he tripped and fell to the ground while descending some steps. His claim was accepted by the Office of Workers' Compensation Programs for a left ankle sprain by letter dated January 5, 1993. On November 23, 1992 appellant underwent surgery on his left ankle for removal of bone spurs, which was performed by Dr. Bruce W. Wulfsberg, a Board-certified orthopedic surgeon. In a report dated March 12, 1993, he released appellant to return to light duty.

By letter dated September 1, 1993, the Office expanded its acceptance of appellant's claim to include the condition of osteochondritis dissecans, aggravated by left ankle sprain. The Office also authorized surgery for arthroscopic debridement of an osteochondral lesion with drilling of the talar surface of the left ankle. The surgery was performed on October 13, 1993 by Dr. Paul J. Hecht, a Board-certified orthopedic surgeon.

In a treatment note dated April 5, 1994, Dr. Hecht released appellant to return to work on April 18, 1994.

By letter dated December 28, 1994, appellant's attorney advised the Office that appellant sought a schedule award and submitted a report from Dr. David Weiss, an osteopath, in support of this claim.

Dr. Weiss examined appellant on November 14, 1994 and evaluated him for an impairment rating. In a report dated November 16, 1994, he stated that he had reviewed the operative reports on November 23, 1992 and October 13, 1993, in addition to the reports from Dr. Wulfsberg and concluded that appellant still had residuals from his employment-related

injuries, including left ankle pain and stiffness daily; weakness in the left ankle; swelling of the left ankle; and instability of the left ankle. Dr. Weiss found that appellant had a 21 percent permanent impairment of the left lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He calculated that, with regard to range of motion deficit in his left ankle, appellant had dorsi-flexion deficit of 7 percent pursuant to Table 42, page 78 of the A.M.A., *Guides*, inversion deficit of 2 percent pursuant to Table 43, page 78 of the A.M.A., *Guides*, amounting to a combined value of 9 percent, plus motor strength deficit of 12 percent pursuant to Table 39, page 77 of the A.M.A., *Guides*.

In a letter dated August 21, 1994, the Office scheduled an appointment for appellant with Dr. Hecht to evaluate the extent of permanent impairment based on loss of use of his left leg due to the November 12, 1992 employment injury.

Dr. Hecht examined appellant and performed an impairment evaluation on October 23, 1995. In a letter dated October 23, 1995, he found that appellant retained minus 10 degrees dorsi-plantar flexion and 45 degrees plantar flexion of the left ankle and that appellant had a range of inversion of 20 degrees and range of eversion of 10 degrees. Dr. Hecht further found that appellant had an additional impairment of function due to weakness, atrophy, pain or anesthesia of 15 percent, with no ankylosis, amounting to a total impairment of 35 percent of the left lower extremity.

By letter dated November 30, 1995, the Office asked Dr. Hecht to specify the source and methods by which he calculated his findings of 15 percent and 35 percent in his October 23, 1995 impairment evaluation.

In response, Dr. Hecht, through appellant's attorney, submitted progress notes dated October 20, 1995. He stated that:

“[Appellant] continues to work although he has complaints of pain. His range of motion is limited with [minus] 10 degrees of dorsiflexion and plantar flexion to 45 degrees. Appellant has 20 degrees of inversion and 10 degrees of eversion. There is no frank ankylosis. He is in addition of [sic] a 15 [percent] impairment, secondary to pain and atrophy. Table 33 on page 59 of the [A.M.A.,] [*G*]uides to the evaluation of prone impairment from the A[.]M[.]A[.], [*G*]uides [T]hird edition does not address the problem of a lack of dorsiflexion up to neutral. His total range of motion is 35 degrees. I believe his total impairment is 35 [percent] of the left lower extremity.”

By letter dated January 3, 1995, the Office sought further clarification from Dr. Hecht regarding the source of his impairment findings. The letter contained a memorandum from an Office medical adviser which noted:

“[U]sing the A[.]M[.]A[.], [*G*]uide[s] [fourth] [e]dition, Dr. Hecht does not adequately explain how he calculates 15 [percent] for pain and atrophy. [Range of Motion] dorsiflexion of [minus] 10 degrees = 7 [percent] plantar flexion 45 degrees = 0 [percent], [p]age 78 Table 42. Inversion 20 degrees = 2 [percent],

eversion 10 degrees = 2 [percent], total = 4 [percent], [p]age 78 Table 43. Total impairment 7 [percent] + 4 [percent] = 11 left lower extremity.”

In a follow-up report dated December 22, 1995, Dr. Hecht stated:

“I have reviewed my last examination of [appellant] and his range of motion parameters from that examination. I have consulted the *Guides to the Evaluation of Permanent Impairment* published by the American Medical Association (Third Edition) in reference to your question regarding [p]oints 5 and 6 from your inquiry.

“I would like to revise my determination. Point 5 remains at 15 percent impairment secondary to weakness and pain. This is a subjective evaluation on my part. There are no tables or objective measurements that are generally used in this type of determination. However, his range of motion numbers would lead to a determination somewhat lower than what I had initially given him. His percent impairment of the lower extremity secondary to range of motion impairment is 8 percent. I would continue to give him a 15 percent impairment secondary to weakness and pain. This would, of course, calculate to an impairment rating of 23 percent of the left lower extremity rather than 35 percent.”

In an undated Office memorandum, the Office indicated that the Office medical adviser, after reviewing Dr. Hecht’s December 22, 1995 supplemental report, had reiterated his earlier finding of an 11 percent impairment of the left leg.

On January 22, 1996 the Office granted appellant a schedule award for an 11 percent permanent impairment of the left leg for the period December 1, 1994 to July 10, 1995, for a total of 31.68 weeks of compensation.

By letter dated January 30, 1996, appellant’s attorney requested a hearing before an Office representative which was held on July 25, 1996.

By decision dated February 11, 1997, the Office hearing representative affirmed the January 22, 1996 schedule award. The Office found that Dr. Hecht’s estimate of impairment lacked probative value because it was not rendered in conformance with the fourth edition of the A.M.A., *Guides*. The hearing representative found that the Office medical adviser had explained his estimate of impairment in conformance with the fourth edition of the A.M.A., *Guides*.

The Board finds that appellant has no more than an 11 percent permanent impairment for loss of use of the left leg, for which he received a schedule award.

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ However, neither the Act nor its regulations specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.⁴

In the instant case, the Office determined that appellant had an 11 percent impairment of his left leg based on the findings of the Office medical adviser, who based his estimate of impairment by taking Dr. Hecht's physical findings for range of motion, for dorsiflexion, plantar flexion and for inversion and eversion of the left ankle, applying them to the applicable tables of the A.M.A., *Guides* and then adding them together to arrive at the total percentage of impairment to appellant's left leg.⁵ The Board finds that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than an 11 percent impairment of his left leg, for which he has received a schedule award. Appellant has failed to provide probative medical evidence that he has greater than the 11 percent impairment already awarded. The Board notes that Dr. Weiss' opinion lacks probative value, as he failed to explain his application of the A.M.A., *Guides* under the protocols set forth above.

³ 5 U.S.C. § 8107(c)(19).

⁴ *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

⁵ The Office properly found that Dr. Hecht's reports and opinions lacked probative value because they were not rendered pursuant to the fourth edition of the A.M.A., *Guides*.

The decision of the Office of Workers' Compensation Programs dated February 11, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 2, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member