

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEANETTE ASHTON and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Bell Mawr, NJ

*Docket No. 98-400; Submitted on the Record;
Issued November 16, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a ratable permanent impairment to her left leg causally related to her March 22, 1990 employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a crush injury to her second toe and a fracture to the third and fourth toes of her left foot in the performance of duty on March 22, 1990. By decision dated November 3, 1995, the Office determined that the medical evidence did not establish a permanent impairment to the left foot entitling her to a schedule award. In a decision dated February 11, 1997, an Office hearing representative affirmed the prior decision. Following a request for reconsideration, the Office determined by decision dated August 7, 1997 that the evidence submitted was insufficient to warrant merit review of the claim.

The Board has reviewed the record and finds that appellant has not established a permanent impairment of the left leg entitling her to a schedule award.

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.¹ 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, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.²

¹ 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).

² A. George Lampo, 45 ECAB 441 (1994).

In this case, an attending physician, Dr. David Weiss, an osteopath, opined in a February 25, 1994 report that appellant had a 23 percent impairment to the left leg. Dr. Weiss assigned 1 percent for each of the affected digits, the second, third and fourth, for status post fracture, a 12 percent impairment for muscle strength loss, and 8 percent muscle atrophy. In a supplemental report dated May 6, 1997, Dr. Weiss indicated that the 12 percent impairment for muscle strength loss was from Table 39 of the A.M.A., *Guides*, and the 8 percent muscle atrophy was derived from Table 37. Dr. Weiss did not provide additional detail or discuss an impairment for status post fracture of the left foot digits.

In a report dated January 9, 1995, an Office medical adviser reviewed the February 25, 1994 report of Dr. Weiss. The medical adviser indicated that the A.M.A., *Guides* did not provide an impairment for status post fracture of the toes, noting that Table 61 was for ankylosed digits and was not applicable in this case.³ With respect to muscle weakness, the medical adviser noted that Table 39 identified the following muscle groups: hip, knee, ankle and great toe.⁴ The medical adviser indicated that the employment injury did not involve any of these muscle groups and therefore there was no permanent impairment under Table 39. The Board notes that Dr. Weiss' supplemental report merely identified Table 39, but does not contain any explanation as to how this table was applied in the present case. With respect to muscle atrophy, the Office medical adviser noted that Dr. Weiss had found a one and a half centimeter deficiency in the left gastrocnemius. The medical adviser stated, however, that the actions of the gastrocnemius were unrelated to the employment injuries and there was no medical rationale to support the use of Table 37 in this case.⁵ Dr. Weiss did not provide any statement on causal relationship or otherwise explain how Table 37 was applicable in the present case.

The Board accordingly finds that there is no probative medical evidence establishing that appellant has a ratable permanent impairment to the left foot or leg causally related to her employment injury. The Office therefore properly denied a schedule award in this case.

³ A.M.A., *Guides* (4th ed. 1993) at 82, Table 61.

⁴ A.M.A., *Guides* at 77, Table 39.

⁵ A.M.A., *Guides* at 77, Table 37. This table provides impairments from leg muscle atrophy in the thigh and calf.

The decisions of the Office of Workers' Compensation Programs dated August 7 and February 11, 1997 are affirmed.

Dated, Washington, D.C.
November 16, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member