

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAULA V. ALEXANDER and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 98-406; Submitted on the Record;
Issued November 2, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that she has greater than a two percent permanent impairment of the right lower extremity, for which she received a schedule award.

On July 29, 1996 appellant, then a 48-year-old mail clerk, sustained an injury to her right ankle while in the performance of her duties. The Office of Workers' Compensation Programs subsequently accepted appellant's claim for contusion, sprain and hematoma of the right leg. On January 16, 1997 appellant filed a claim (Form CA-7) for a schedule award under the Federal Employees' Compensation Act. By letter dated July 15, 1997, the Office acknowledged receipt of appellant's claim and advised her of the need for additional medical evidence.

In response to the Office's request for additional medical evidence, appellant's treating physician, Dr. Jean-Claude Loiseau, a Board-certified surgeon, reported that with respect to appellant's ankle, she retained 15 degrees of dorsiflexion, 30 degrees of plantar flexion, 20 degrees of inversion and 10 degrees of eversion. She further indicated that appellant "experiences pain and fatigue after standing for over [one] hour" and that "[s]he also develops ankle swelling ... with numbness of the toes. Dr. Loiseau additionally noted that appellant "still develops spasms" in her right leg both at rest and when active. Finally, she identified June 12, 1997 as the date of maximum medical improvement. Dr. Loiseau, however, did not provide a specific impairment rating in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993). On September 10, 1997 the Office medical adviser reviewed Dr. Loiseau's report and concluded that appellant had a two percent permanent impairment of the right lower extremity.

By decision dated October 3, 1997, the Office granted appellant a schedule award for a two percent permanent impairment of her right leg. The award covered a period of 5.76 weeks from June 12 to July 22, 1997. Appellant filed a timely appeal with the Board on October 27, 1997.

The Board finds that the case is not in posture for a decision.

Section 8107 of the Act¹ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Office has adopted the A.M.A., *Guides* (4th ed. 1993) as an appropriate standard for evaluating schedule losses and the Board has concurred in such adoption.²

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*. Under the procedures promulgated by the Office, 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*.³

In the instant case, appellant's treating physician was unfamiliar with the fourth edition of the A.M.A., *Guides* and, therefore, the Office advised him that he need only answer a few specific questions and not "worry about using [the] A.M.A., [*Guides*] Fourth Edition." As such, the Office medical adviser was the only physician of record to rate appellant's condition in accordance with the A.M.A., *Guides*. However, this report does not contain adequate rationale.⁴ The only explanation for the two percent rating provided by the Office medical adviser appears on an attached worksheet which notes "[Right] lower extremity loss of ankle eversion mild." The worksheet also includes a reference to page 78, Table 43 of the *Guides*. However, the Office medical adviser did not specifically address Dr. Loiseau's measurements regarding dorsiflexion, plantar flexion or inversion. Moreover, the Office medical adviser did not rate or assign any percentage of impairment for the pain, fatigue, swelling, numbness and spasms identified by Dr. Loiseau. Although the standards for evaluating the permanent impairment of an extremity under the A.M.A., *Guides* are based primarily on loss of range of motion, all factors that prevent a member from functioning normally, including pain, loss of strength, and loss of sensation should be considered, together with loss of motion if applicable, in evaluating the degree of permanent impairment.⁵ The case will, therefore, be remanded for a proper determination of the permanent impairment of appellant's right leg, based on all relevant factors as described by Dr. Loiseau. After further development as it may find necessary, the Office should issue a *de novo* decision.

¹ 5 U.S.C. § 8107.

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

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (March 1995).

⁴ *Id.* at Chapter 2.808.6(d)(1). The procedure manual notes: "As a matter of course, the [district medical adviser] should provide rationale for the percentage of impairment specified."

⁵ *Terry E. Mills*, 47 ECAB 309, 313 (1996).

The decision of the Office of Workers' Compensation Programs dated October 3, 1997 is hereby set aside and the case remanded for further action in accordance with this decision.

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

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member