

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES N. BYRD and U.S. POSTAL SERVICE,  
POST OFFICE, Shelbyville, IN

*Docket No. 98-945; Submitted on the Record;  
Issued November 15, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether appellant has an employment-related permanent impairment of either foot or leg.

The Office of Workers' Compensation Programs accepted that appellant's Achilles' tendinitis, retrocalcaneal bursitis and the surgery done on his right foot on February 23, 1995 were causally related to factors of his employment as a letter carrier. The Office also accepted that appellant's left heel spur and the excision surgery for this condition on February 2, 1996 were causally related to his employment.

On July 29, 1996 appellant filed a claim for a schedule award.

In a report dated June 24, 1996, Dr. Edward P. Todderud, the orthopedic surgeon, who performed the surgery on appellant's right foot, stated:

"I have been asked to provide a permanent partial impairment rating on [appellant] regarding his right Achilles tendinitis and retrocalcaneal bursitis. He had surgery on this February 23, 1995. I believe the last time I had seen him for this problem was April 6, 1995. After that, he had been under the care of my associate, Dr. Leaming, for similar symptoms and disorder of the left side.

"Since there is no limitation of range of motion of the ankle or hindfoot with this disorder, I do not find any category in the [American Medical Association,] *Guides to the Evaluation of Permanent Impairment*, 4<sup>th</sup> Edition, ... which give him any impairment based on this disorder."

In a report dated August 1, 1996, Dr. Eric S. Leaming, the orthopedic surgeon, who performed the surgery on appellant's left foot, stated: "[Appellant] feels his calf pain has been markedly improved with surgical intervention but still has enough discomfort about his foot and Achilles tendon attachment that he does not think he can work over 2 hours walking. Since it

has been almost 6 months since his surgery, he has probably reached maximal medical improvement.” In a report dated August 6, 1996, Dr. Leaming stated: “[Appellant] has a 2 percent impairment of his left foot 2 degrees [secondary] to his surgery.<sup>1</sup> This rating was arrived at using the A.M.A., *Guides*.”

By letter dated August 28, 1996, the Office requested that Dr. Leaming provide a report containing the measurements of appellant’s range of motion and describing “any subjective factors such as fatigue, discomfort, pain, instability or weakness causing further impairment.” In a report dated November 6, 1996, Dr. Leaming stated:

“Using the A.M.A., *Guides* which shows that the patient has 20 percent of dorsiflexion of his ankle, 40 percent of plantar flexion, normal inversion and eversion, the patient has a 0 percent impairment rating. The patient does have easy fatiguability, discomfort and some degree of pain, which is less now than it was before surgery that causes him enough discomfort. This makes the patient feel that he cannot do over two hours a day walking....”

An Office medical adviser reviewed Dr. Leaming’s November 6, 1996 report on November 23, 1996 and stated that appellant did not have an impairment of either lower extremity based on range of motion.

By decision dated January 29, 1997, the Office found that the evidence failed to demonstrate that appellant had a permanent impairment of either lower extremity.

The schedule award provision of the Federal Employees’ Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> 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.<sup>4</sup>

The Board finds that the evidence does not establish that appellant has a permanent impairment of the right foot or leg.

Dr. Todderud stated in a June 24, 1996 report, that appellant had no permanent impairment of the right foot or leg under the standards of the A.M.A., *Guides*. There is no medical evidence that appellant has a permanent impairment of the right foot or leg.

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<sup>1</sup> The last word in this handwritten report may be “injury” rather than “surgery.”

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.304.

<sup>4</sup> *Quincy E. Malone*, 31 ECAB 846 (1980).

The Board further finds that the case is not in posture for a decision on the issue of whether appellant has a permanent impairment of the left foot or ankle.

In a report dated August 6, 1996, Dr. Leaming stated that appellant had a two percent permanent impairment of the left foot. He and an Office medical adviser correctly concluded that application of the tables of the A.M.A., *Guides* to the motion of appellant's ankle reported in Dr. Leaming's November 6, 1996 resulted in a zero percent permanent impairment. However, in this report Dr. Leaming also reported that appellant had easy fatiguability and some degree of pain. Pain and loss of strength are impairments that should be considered in determining whether an employee has a permanent impairment.<sup>5</sup> The Office medical adviser who reviewed Dr. Leaming's November 6, 1996 report should have rated these impairments, obtaining a supplemental report from Dr. Leaming if necessary. The case will be remanded to the Office for this purpose.

The decision of the Office of Workers' Compensation Programs dated January 29, 1997 is affirmed with regard to the right lower extremity. With regard to the left lower extremity, the decision is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, D.C.  
November 15, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member

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<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a(2) (March 1995); *Jack L. Lemond*, 33 ECAB 15 (1981).