

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET A. KREUTZER and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Leavenworth, KS

*Docket No. 99-1002; Submitted on the Record;
Issued November 26, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant sustained more than a seven percent impairment for permanent disability related to her foot injury; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits on the grounds that she no longer required continuing medical treatment for her August 14, 1997 work-related injury.

On August 14, 1997 appellant filed a notice of traumatic injury and claim for compensation alleging that she injured her left foot when she tripped and fell over a cord on the floor at work. Appellant was treated at the employing establishment's health unit, where her left foot was placed in a cast. The Office accepted the claim for fracture of the fifth metatarsal of the left foot. Appellant was off work from August 15 until September 17, 1997 when she returned to light duty.

In an attending physician's report and duty status report dated October 15, 1997, Dr. Peter J. Cristiano, appellant's treating physician and a Board-certified family practitioner, noted the mechanism of injury on August 14, 1997 and diagnosed that appellant sustained a fracture in her left foot at the fifth metatarsal. He recommended that appellant be given sedentary work, with no walking or standing for 30 days.

Dr. Cristiano subsequently extended appellant's light-duty restrictions until her voluntary retirement from the employing establishment on December 30, 1997.

At the request of the Office, Dr. Dale D. Dalenberg, a Board-certified orthopedist, examined appellant and prepared a report dated January 28, 1998. He noted that appellant sustained a fracture to her left fifth metatarsal bone when she tripped over a cord on her job on August 14, 1997. Dr. Dalenberg reported that appellant had a "significant prior history of a brain abscess as a child which led to a left hemiparesis." He noted that appellant had residual paresis of the left lower extremity, with a chronic left foot drop and that she had been issued a

plastic left ankle foot orthosis to help her ambulate with the foot drop and keep her from dragging her toes. According to Dr. Dalenberg, after her August 14, 1997 work injury, appellant had difficulty with a cast due to her preexisting neurological disorder and was soon issued a walker. He noted that appellant was most recently issued a postop walking shoe for ambulation, but was still experiencing a little tenderness over the later border of the left foot and consequently was unable to get back into her plastic ankle foot orthosis brace because it exacerbated her foot tenderness. Dr. Dalenberg noted physical and x-ray findings. He diagnosed that appellant had a healed fracture in the left fifth metatarsal, but noted that she still had chronic left foot drop related to her preexisting neurological disorder, which prevented her from achieving a plantigrade position of the left foot and ankle on walking. Dr. Dalenberg concluded that if appellant had not retired, she would have been released for full duty without restrictions.

By letter dated January 12, 1998, the Office requested further information concerning the basis for appellant's resignation from work and whether she required continuing medical treatment for her employment-related injury.

In a decision dated February 20, 1998, the Office terminated appellant's medical benefits on the grounds that the weight of the medical evidence, residing with the opinion of the Office referral physician, established that appellant had no continuing disability as a result of the August 14, 1997 work injury.

By letter dated May 18, 1998, appellant requested reconsideration of the Office's February 20, 1998 decision.

Appellant also filed a Form CA-7 requesting a schedule award.

In support of her reconsideration request, appellant submitted a June 4, 1998 report from Dr. William Bohn, a Board-certified orthopedic surgeon, who examined appellant at the request of Dr. Cristiano. Dr. Bohn noted that at age 12 appellant had undergone brain surgery for an abscess in the right side of her brain which resulted in temporary paralysis on the left side of her body for a period of time. He noted that while appellant eventually regained use of her left side, she was left with weakness in the left foot and a foot drop. Dr. Bohn further noted appellant's August 14, 1997 work injury, her subjective complaints, physical findings and x-ray findings. He diagnosed that appellant had a healed left fifth metatarsal fracture with residual pain as a result of her work-related fracture. According to Dr. Bohn, appellant sustained permanent loss of strength and function in left hindfoot and ankle as a result of being immobilized by the fracture. He recommended that appellant's ankle foot orthosis brace be modified to accommodate the changes in the left foot due to the work-related injury. Dr. Bohn concluded that appellant had 10 percent permanent impairment of the left foot but opined that appellant no longer required orthopedic intervention.

In a June 18, 1998 report, Dr. Cristiano indicated that he last examined appellant on May 27, 1998, at which time she complained of left foot pain. He noted that appellant's left foot was weakened with atrophy in the muscles and decreased strength. According to Dr. Cristiano, appellant's work injury caused her increased weakness in the left foot because her foot had been under a period of immobilization following the fracture. He stated that he concurred with

Dr. Bohn's findings. Dr. Cristiano concluded that appellant "probably does have some permanent impairment of the left lower extremity."

In a report dated June 19, 1998, Dr. Jerry S. Jackson, a podiatrist, noted that appellant suffered from midfoot fractures to her left foot while at work in 1997. He reported that the fractures were multiple and included the styloid process, medial aspect and midshaft fifth metatarsal. Dr. Jackson stated that appellant's work-related fractures had healed "as much as they [were] going to heal," leaving appellant with chronic edema, arthritis and tendinitis in the areas of the injury. He concluded that appellant sustained a decrease in strength and tendon integrity as compared to areas prior to the injury.

In a July 20, 1998 report, an Office medical adviser, rejected the 10 percent impairment rating suggested by Dr. Bohn on the grounds that he failed to discuss his findings in accordance with the fourth edition of the A.M.A., *Guides*. The Office medical adviser specifically noted that Dr. Bohn did not report any measurements for range of motion, no grades for residual pain or sensory deficit and that the 10 percent impairment rating was not supported by the A.M.A., *Guides*.

By letter dated August 21, 1998, the Office referred appellant to Dr. Mary Brothers, a Board-certified physician in occupational medicine, for a second opinion evaluation and an impairment rating.

In a report dated October 23, 1998, Dr. Brothers discussed appellant's relevant work and medical histories and noted the work injury of August 14, 1997. She noted that subsequent to her foot fracture, appellant complained of rubbing along the lateral edge of her left foot. Dr. Brothers noted on examination that appellant complained of left foot weakness, popping around the patellar area of the left knee, swelling of the medial foot every evening, numbness in the left fourth and fifth toes and some soreness in the lateral foot. She noted physical findings such as tenderness under the left fifth metatarsal with pressure applied to the sole of the foot, but no crepitus; flexion of the ankle measured at 35 degrees on the right, 0 percent inversion and minimal inversion. Dr. Brothers recorded range of motion measurements for the third, fourth and fifth toes but noted that the measurements were difficult to obtain because of hammertoe configuration. According to Dr. Brothers, appellant's impairment rating was difficult to assess given her preexisting chronic foot drop and the absence of any recorded measurements of the preinjury condition of her foot from which to compare whether appellant had sustained any additional deficit in function due solely to the fracture. She noted that appellant's medical records indicated that her work injury was sustained largely to the body of the left fifth metatarsal and that there was no evidence of any specific complication of that condition in the record. Dr. Brothers concluded that appellant sustained a seven percent impairment of the left lower extremity based on the presence of a fracture in the fifth metatarsal according to Table 64,

page 86 of the fourth edition of the A.M.A., *Guides*. The date of maximum medical improvement was identified as January 28, 1998, the date appellant was approved for a return to her regular job.¹

¹ Dr. Brothers noted that appellant complained of a loss of sensation in her left knee which she attributed to the

In a report dated November 30, 1998, an Office medical adviser concurred with Dr. Brothers that appellant had no more than a seven percent permanent impairment to the left lower extremity based on the A.M.A., *Guides*.

In a decision dated December 1, 1998, the Office performed a merit review and modified its prior February 20, 1998 decision to reflect that appellant had a seven percent permanent impairment of the left foot. The Office, however, again determined that appellant no longer required medical treatment for the August 14, 1997 work injury and terminated her medical benefits.

On December 3, 1998 the Office issued a schedule award for a seven percent permanent impairment of the left foot from the period January 28 to May 8, 1998.

In a letter dated December 17, 1998, appellant requested clarification as to how the Office calculated the period of her award.

By letter dated December 28, 1998, the Office advised appellant that based on the Federal Employees' Compensation Act percentage table, a 7 percent impairment rating translated to 14.35 weeks of compensation.²

The Board finds that the evidence is insufficient to establish that appellant has more than a seven percent permanent impairment of the left lower extremity for which she received a schedule award.

Section 8107 of the 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.³ 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 Board has authorized 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 as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁴

Appellant contends that she is entitled to at least a 10 percent impairment rating based on the opinion of Dr. Bohn, who reported that appellant sustained a 10 percent impairment of the left foot. He, however, failed to reference the appropriate tables and pages in the A.M.A.,

August 14, 1997 work injury. She suggested that appellant's impairment rating would be increased if the Office took this additional knee condition into consideration. The Board notes, however, that the Office only accepted the instant claim for a fifth metatarsal foot fracture and not a knee injury.

² The compensation schedule provides for 205 weeks of compensation for foot loss; *see* 5 U.S.C. § 8107(c)(4). A 7 percent impairment of the left foot ($205 \times .07 = 14.35$) equates to 14.35 weeks of compensation.

³ 5 U.S.C. § 8107(a).

⁴ *James Kennedy, Jr.*, 40 ECAB 620 (1989); *Quincy E. Malone*, 31 ECAB 846 (1980).

Guides to support his diagnosis and gave no explanation for the basis of his rating. It is well settled that when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*. The Board cases are clear that if an attending physician does not utilize the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment. For this reason, the Board finds that Dr. Bohn's June 4, 1998 report, finding that appellant has a 10 percent permanent impairment of the left lower extremity, is of diminished probative value.⁵

Dr. Brothers, on the other hand, reviewed appellant's medical history, examined appellant and performed diagnostic tests. She compared her clinical findings to the appropriate tables and pages in the A.M.A., *Guides*, and properly calculated a seven percent permanent impairment of the left lower extremity. Dr. Brothers is the only physician of record who has provided thorough evaluation in conformance with the proper edition of the A.M.A., *Guides*. Her finding of a seven percent impairment was also approved by the Office medical adviser. Accordingly, as the report of Dr. Bohn fails to explain why he found a 10 percent impairment under the A.M.A., *Guides* and the reports of Drs. Cristiano and Taylor do not provide any opinion on an impairment rating, the Office properly issued a schedule award for no more than a seven percent impairment of the left lower extremity based on Dr. Brother's report. Thus, the Board affirms the Office's finding that appellant is entitled to no more than a seven percent impairment of her left lower extremity.

The Board also finds that the Office properly terminated appellant's medical benefits.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁶ After it has been determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁷ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁸ To terminate authorization for medical treatment, the Office must establish that appellant no longer has any residuals of an employment-related condition which require further medical treatment.⁹

⁵ Dr. Cristiano, appellant's attending physician, stated that Dr. Bohn's impairment rating was not in his area of expertise. As such, Dr. Cristiano's opinion is of diminished probative value as he offered no opinion as to the extent of appellant's left lower extremity impairment. Likewise, Dr. Taylor did not provide an opinion as to appellant's impairment rating.

⁶ *Harold S. McGough*, 36 ECAB 332 (1984).

⁷ *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

⁸ *Furman G. Peake*, 41 ECAB 361 (1990).

⁹ *Id.*

The Board finds that the Office carried its burden of establishing that appellant no longer has any residuals of her employment-related injury that require medical treatment. In his report dated January 28, 1998, Dr. Dalenberg diagnosed that appellant's fifth metatarsal fracture causally related to her work injury was healed. He, therefore, approved appellant for a return to full duty. Dr. Bohn specifically noted in his June 4, 1998 report, that appellant needed no further orthopedic intervention related to her work injury. In his June 18, 1998 report, Dr. Cristiano stated that he concurred with Dr. Bohn's findings.¹⁰ Dr. Brothers also indicated that appellant had recovered from her work-related foot fracture and made no recommendations for further medical treatment. Thus, inasmuch as the weight of the medical evidence indicates that appellant is no longer in need of medical treatment for her fifth metatarsal fracture, the Office properly terminated appellant's medical benefits.

The decisions of the Office of Workers' Compensation Programs dated December 3 and December 1, 1998 are hereby affirmed.

Dated, Washington, D.C.
November 26, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

¹⁰ Dr. Jackson did not address whether appellant required further medical treatment for his foot condition related to the August 14, 1997 work injury.