

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALICE M. RICHARDSON and DEPARTMENT OF THE ARMY,
RED RIVER ARMY DEPOT, Texarkana, TX

*Docket No. 98-453; Submitted on the Record;
Issued September 7, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant established that she has greater than a 15 percent permanent impairment of the right lower extremity, for which she received a schedule award.

On November 17, 1988 appellant, then a 51-year-old electroplate worker, sustained a broken right ankle while in the performance of duty. Appellant initially underwent surgery to repair her ankle on November 18, 1988, and a second surgical procedure was performed on September 13, 1989. On December 29, 1988 the Office of Workers' Compensation Programs accepted appellant's claim for fractured right distal fibula and appellant received appropriate wage-loss compensation. Appellant subsequently filed a claim for a schedule award under the Federal Employees' Compensation Act (Form CA-7). By decision dated April 6, 1990, the Office granted appellant a schedule award for a 14 percent permanent impairment of her right lower extremity due to a loss of range of motion in her ankle.¹ The award covered a period of 40.32 weeks from January 3 to April 7, 1990.

Approximately six years later, appellant requested an additional schedule award based on the May 30, 1996 report of her treating physician, Dr. Green. He noted recent x-ray evidence of joint space narrowing and concluded that appellant developed traumatic arthritis as a result of her 1988 fibular fracture. Dr. Green further noted that appellant may require ankle fusion as a result of her traumatic arthritis. He calculated a 15 percent lower extremity impairment based upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).

The Office medical adviser reviewed the record and Dr. Green's May 30, 1996 report and concurred with his findings. In a report dated October 7, 1996, the Office medical adviser noted

¹ The schedule award was based on the February 4, 1990 report of the Office medical adviser, who reviewed the January 3, 1990 findings of appellant's treating physician, Dr. Barry M. Green, a Board-certified orthopedic surgeon.

that the reported joint space narrowing of approximately 2 millimeter (mm) in appellant's right ankle warranted an impairment rating of 15 percent for arthritis in accordance with the A.M.A., *Guides*, Table 62, Chapter 3.

In a decision dated October 16, 1997, the Office granted appellant a schedule award for a 15 percent permanent impairment of her right lower extremity. The award covered a period of 43.20 weeks from May 30, 1996 to March 28, 1997, and appellant received a lump-sum payment of \$16,595.51.

The Board has reviewed the case record and concludes that appellant has failed to establish that she has greater than a 15 percent permanent impairment of the right lower extremity.

Section 8107 of the Act² 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* as an appropriate standard for evaluating schedule losses, and the Board has concurred in such adoption.³

The A.M.A., *Guides*, 3, Table 62, provide ratings for arthritis impairments based on roentgenographically determined cartilage intervals. In his May 30, 1996 report, Dr. Green noted that appellant's April 1996 x-rays of her right ankle revealed traumatic arthritis with "[two] mm or less of joint space." As the Office medical adviser correctly noted, a cartilage interval of 2mm corresponds to a 15 percent impairment of the lower extremity under Table 62 at page 83. While Dr. Green also noted "crepitation on range of motion," the Office medical adviser properly found that an additional rating for crepitation "would duplicate the arthritis award."⁴ Moreover, although Dr. Green did not provide measurements for range of motion, appellant would not be entitled to an additional impairment rating for any loss of range of motion as this would also duplicate the award for arthritis.⁵

As the Office medical adviser properly utilized Dr. Green's May 30, 1996 description of appellant's impairment in conjunction with A.M.A., *Guides* to evaluate appellant's impairment, and there is no other evidence of record that appellant has more than a 15 percent permanent

² 5 U.S.C. § 8107.

³ *James J. Hjort*, 45 ECAB 595 (1994).

⁴ The A.M.A., *Guides*, 82 state that "For most patients, roentgenographic grading is a more objective and valid method for assigning impairment estimates than physical findings, such as range of motion or joint crepitation." A.M.A., *Guides* 82.

⁵ The Office's procedural manual clarifies that Table 62, Arthritis Impairments based on X-ray, is not compatible with Tables 40 through 60, which pertain to impairment ratings for loss of range of motion and joint ankylosis. Federal (FECA) Procedural Manual, Part 3 -- Medical, *Schedule Award*, Chapter 3.700 (October 1995).

impairment of the right lower extremity, the Office properly found that appellant had a 15 percent impairment of the right lower extremity.

The decision of the Office of Workers' Compensation Programs dated October 16, 1997 is affirmed.

Dated, Washington, D.C.
September 7, 1999

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member