

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OPHIUS A. PINTO and DEPARTMENT OF TRANSPORTATION,
COAST GUARD, Curtis Bay, MD

*Docket No. 98-1763; Submitted on the Record;
Issued January 21, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established entitlement to a greater than seven percent permanent impairment of the left ankle for which he has received a schedule award.

On August 19, 1996 appellant, then a 31-year-old material handler, alleged that on that day he twisted his left ankle while in the performance of duty. On October 18, 1996 the Office of Workers' Compensation Programs accepted appellant's claim for left ankle sprain.

In a medical report dated January 16, 1997, Dr. Raymond D. Drapkin, appellant's treating physician and Board-certified in orthopedic surgery, stated that appellant's left ankle dorsiflexion "goes to 5 degrees, plantar flexion goes to 15 degrees, inversion goes to 0 degrees, eversion goes to 0 degrees. There is pain anterior and anterior laterally." He further noted that "[I]n accordance with the A.M.A., *Guides* "taking into consideration pain, atrophy, weakness, loss of endurance and loss of function, [appellant] has sustained a 20 percent permanent impairment to his left ankle as a result of the injury of August 19, 1996."

In a March 31, 1997 medical report, Dr. Drapkin stated that appellant's date of maximum medical improvement was January 16, 1997, and that appellant could dorsiflex the left ankle to 5 degrees and plantar flex to 15 degrees, inversion and eversion were 0 degrees, respectively, and that appellant had a 20 percent permanent impairment of the left ankle.

The Office referred appellant's medical files to Dr. Grant, the Office medical consultant, who, on June 9, 1997, stated that appellant's date of maximum medical improvement was March 31, 1997, and that by relying on the data from the treating physician, determined that appellant had a seven percent permanent impairment of the left ankle.

On June 25, 1997 the Office awarded appellant a seven percent permanent impairment of the left ankle.

Appellant appealed the Office's decision, contending that his doctor calculated a 20 percent permanent impairment of the left ankle.

The Board has duly reviewed the entire case record in this appeal and has determined that the Office properly awarded appellant a seven percent permanent impairment of the left ankle.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.³

Dr. Grant properly relied on Dr. Drapkin's findings,⁴ noting that appellant could dorsiflex the left ankle to 5 degrees and plantar flex to 15 degrees as Dr. Drapkin reported in his March 31, 1997 medical report. Dr. Grant then relied on the A.M.A., *Guides* (4th ed.) to calculate appellant's impairment based on dorsiflexion of the left ankle to 5 degrees which was a 0 percent impairment,⁵ and plantar flexion to 15 degrees which was a 7 percent impairment.⁶ He therefore recommended an impairment rating of seven percent for the left ankle. His report constitutes the weight of the medical opinion as Dr. Drapkin did properly apply the A.M.A., *Guides*.

Accordingly, the Board finds that the Office medical consultant correctly applied the A.M.A., *Guides* in determining that appellant had no more than a seven percent impairment of the left ankle, for which he received a schedule award.⁷

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.304.

³ *James A. England*, 47 ECAB 115 (1995).

⁴ *See James E. Jenkins*, 39 ECAB 860 (1988). Further, Chapters 1 and 2 of the A.M.A., *Guides* note that they were prepared to allow one physician to use the raw clinical data of another physician to arrive at a uniform standardized evaluation.

⁵ A.M.A., *Guides*, 78, Table 42.

⁶ *Id.*

⁷ The Board notes that Dr. Drapkin failed to refer to appropriate references of the A.M.A., *Guides* in his March 31, 1997 report, nor did he demonstrate how he arrived at a determination that appellant had a 20 percent permanent impairment in his report.

The decision of the Office of Workers' Compensation Programs dated June 25, 1997 is hereby affirmed.

Dated, Washington, D.C.
January 21, 2000

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member