

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LELA M. SHAW and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Biloxi, MS

*Docket No. 98-1587; Submitted on the Record;  
Issued March 15, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has permanent impairment of her right lower extremity entitling her to a schedule award.

The Board has duly reviewed the case on appeal and finds that appellant has not established any permanent impairment entitling her to a schedule award.

Appellant, a 50-year-old laundry worker, filed a claim on December 15, 1993 alleging on that date she injured her leg in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar sprain and contusion of the right leg. Appellant requested a schedule award on July 24, 1996. By decision dated May 20, 1997, the Office denied appellant's claim for a schedule award of the right leg. Appellant requested reconsideration on June 10, 1997 and by decision dated August 7, 1997, the Office denied modification of its May 20, 1997 decision.

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.304 of the implementing federal regulations,<sup>2</sup> 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, (A.M.A.) *Guides to the Evaluation of Permanent Impairment*<sup>3</sup> as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> A.M.A., *Guides* (4<sup>th</sup> ed., 1993).

<sup>4</sup> *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

In this case, appellant's attending physician, Dr. M.F. Longnecker, Jr., a Board-certified orthopedic surgeon, completed a report on June 28, 1994. He noted that appellant continued to complain of pain but that he could make no objective findings other than periodically some swelling of the ankle. Dr. Longnecker diagnosed ligamentous soft tissue injuries. He stated, "in order to bring this matter to a close, I feel she has a permanency and would estimate 15 percent loss of function to the leg as a scheduled member. Limitations are: She cannot stand for prolonged periods of time, walk and/or climb."<sup>5</sup>

An Office medical adviser reviewed this report and found that there were no objective findings to indicate any residual permanent impairment. He noted that there were multiple subjective symptoms not based on any pathological finding and concluded that appellant had no residual impairment.

The Office requested that Dr. Longnecker express appellant's impairment in terms of the A.M.A., *Guides*, on October 18, 1994. In a report dated November 8, 1996, Dr. Longnecker diagnosed swelling of the right leg and stated that this condition was secondary to diabetes. He further indicated with a checkmark "yes" that appellant's condition was related to her employment injury. On March 14, 1997 the Office requested additional information from Dr. Longnecker. He responded to the Office's questions diagnosing contusion to the knee and arm with diabetic neuropathy. He noted appellant was currently symptomatic with right wrist entrapment of the median nerve confirmed by clinical examination and electromyogram. In response to the Office's question of why residuals of appellant's soft tissue injuries had lingered, Dr. Longnecker stated that this was due to the progressive nature of diabetes with secondary peripheral neuropathy. He stated that appellant had sustained a permanent disability to her lower extremity due to the work injury.

In a report dated June 5, 1997, Dr. Longnecker stated that appellant reached maximum medical improvement with her right knee in 1994. He stated: "At this time, I placed her with a 15 percent loss of function to the leg as a scheduled member." Dr. Longnecker also noted appellant's carpal tunnel syndrome required release.<sup>6</sup>

Appellant has not submitted the necessary medical evidence to establish that she sustained any permanent impairment of her right lower extremity due to her accepted employment injury. Although Dr. Longnecker provided the opinion that appellant had sustained permanent impairment, he failed to explicitly define that impairment in terms of the A.M.A., *Guides*, *i.e.*, whether it was based on findings of pain, loss of range of motion or loss of strength. He also failed to provide medical rationale explaining how appellant's accepted employment injury of a soft tissue contusion resulted in permanent impairment to the right lower extremity. Dr. Longnecker did not clearly state whether appellant's diabetic neuropathy preexisted her

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<sup>5</sup> Dr. Longnecker's reports did not contain an impairment rating correlating findings with the A.M.A., *Guides*. He apparently based his impairment rating on appellant's work restrictions. Disability for work under 5 U.S.C. § 8105 is not a factor included in a schedule award impairment under 5 U.S.C. § 8107. *Donald S. Saunders*, 41 ECAB 516, 523 (1990).

<sup>6</sup> As the Office has not issued a final decision on this issue, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

employment injury and did not explain the relationship between this condition and her employment injury. He did not explain whether he felt that appellant's preexisting condition was aggravated by her employment injury or whether there was any permanent impairment as a consequence of both any preexisting condition and the employment injury.<sup>7</sup> Without the necessary rationalized medical opinion evidence establishing the type and extent of appellant's permanent impairment correlated with the A.M.A., *Guides*, and explaining the causal relationship between these findings and her accepted employment injury, appellant has failed to establish that she sustained a permanent impairment as a result of her right leg contusion.

The decisions of the Office of Workers' Compensation Programs dated August 7 and May 20, 1997 are hereby affirmed.

Dated, Washington, D.C.  
March 15, 2000

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments are to be included; *see Donald A. Myers*, 22 ECAB 49 (1970). The medical evidence submitted in this case, however, is not sufficient to establish any permanent impairment of the right leg due to the December 15, 1993 employment injury accepted for a contusion.