

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of QUILES W. MERCADO and CORPORATION FOR NATIONAL &
COMMUNITY SERVICES, VOLUNTEERS IN SERVICE TO AMERICA,
Arecibo, PR

*Docket No. 99-2115; Submitted on the Record;
Issued November 30, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant is entitled to greater than a 20 percent impairment of the right lower extremity for which she received a schedule award.

On August 23, 1996 appellant, then a 42-year-old volunteer, filed a traumatic injury claim alleging that she injured her right ankle when she fell at work in the performance of duty on June 10, 1996. The Office of Workers' Compensation Programs accepted the claim for a right ankle fracture. Appellant has been under the care of Dr. Carlos J. Fraga, a Board-certified orthopedic surgeon, for treatment of her work injury. Appellant underwent a shave/lateral incision of the localized fracture on June 14, 1996, a plate and screw removal of the right ankle on October 1, 1996 and removal of the hardware ambulatory tibiofibular joint with debridement, and partial excision of the tibia (exostectomy) on February 11, 1998.

On December 12, 1998 appellant filed a Form CA-7 claim for a schedule award.

In a report dated January 4, 1999, Dr. Fraga noted that appellant sustained a right ankle fracture in June 1996 and developed posterior tibial tendinitis. He indicated that appellant complained of pain of the right foot and ankle with daily activities and that she had been prescribed an ankle brace for walking. Dr. Fraga reported flexion of 10 degrees, extension of 30 degrees, varus of 15 degrees and valgus of 15 degrees. There was no finding of ankylosis or post-traumatic arthritis. He opined that appellant had eight percent impairment of the right lower extremity and listed the date of maximum improvement as January 15, 1999.

In a letter dated April 12, 1999, the Office referred the case for review by an Office medical adviser, who responded to questions posed by the Office on April 19, 1999 and determined that appellant had a 20 percent impairment of the right lower extremity for a displaced intra-articular fracture, referencing page 86, Table 64 of the fourth edition of the

American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The date of maximum improvement was listed as June 14, 1997.

In a decision dated May 12, 1999, the Office issued a schedule award for a 20 percent impairment of the right lower extremity. The period of the award was from June 14, 1997 to July 22, 1998.

The Board finds that appellant is not entitled to greater than a 20 percent impairment of the right lower extremity for which she received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act sets for the number of weeks of compensation to be paid for permanent loss of use of members of the body that are listed in the schedule.¹ The Act, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.² However, 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* have been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.³

In the instant case, appellant's treating physician, Dr. Fraga, indicated that appellant had an eight percent impairment of the right lower extremity causally related to his accepted work injury. Although Dr. Fraga made physical findings, he did not specifically reference how he calculated appellant's degree of impairment under the A.M.A., *Guides*.

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*. 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.⁴ Because Dr. Fraga's opinion was not adequate to determine appellant's entitlement to a schedule award, the Office properly had the Office medical adviser review Dr. Fraga's medical findings and apply those findings to the proper edition of the A.M.A., *Guides*. The Office medical adviser specifically determined that appellant had a 20 percent impairment of the right lower extremity based on the fourth edition of the A.M.A., *Guides*. The Office medical adviser referenced page 86, Table 64 stating that appellant was entitled to a 20 percent impairment rating of the ankle for an intra-articular fracture with displacement. Because the opinion of the Office medical adviser is sufficiently rationalized and based upon a proper application of the physical findings to the A.M.A., *Guides*,

¹ 5 U.S.C. § 8107.

² *Kenneth E. Leone*, 46 ECAB 133 (1994); *Danniel C. Goings*, 37 ECAB 781 (1986).

³ *James Kennedy, Jr.*, 40 ECAB 620 (1989); *Quincy E. Malone*, 31 ECAB 846 (1980).

⁴ *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); see *Thomas P. Gauthier*, 34 ECAB 1060 (1983); *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

the Board concludes that the Office properly awarded appellant a 20 percent schedule award for permanent impairment she sustained to her right lower extremity.

The decision of the Office of Workers' Compensation dated May 12, 1999 is hereby affirmed.

Dated, Washington, DC
November 30, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member