

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIMMIE R. TARVER and DEPARTMENT OF COMMERCE,
CENSUS BUREAU, Dallas, TX

*Docket No. 99-1840; Submitted on the Record;
Issued September 5, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a seven percent impairment of her left leg for which she received a schedule award.

On December 15, 1994 appellant, then a 60-year-old clerk, filed a claim for compensation alleging that on that day she fractured her left leg while in the performance of duty. The Office of Workers' Compensation Programs accepted her claim for a fracture, left hip.¹

In a medical report dated January 22, 1998, Dr. W. Thomas McCraney, Jr., appellant's treating physician, Board-certified in orthopedic surgery, stated that appellant "still has some discomfort in her hip," and recommended a seven percent impairment of the left lower extremity based on her "intertrochanteric fracture."

In a medical report dated November 3, 1998, the Office medical adviser noted that, based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² appellant's impairment due to pain and mild femoral nerve weakness resulted in a one percent impairment of the left lower extremity.

In a medical report dated November 20, 1998, Dr. McCraney stated that the Office medical adviser mistakenly found that he had rated appellant on pain.³ He added: "[I]f you want to give the patient some additional impairment rating due to pain, loss of sensation, etc., then certainly she is entitled to one more percentage point as far as I am concerned."

¹ In her appeal, appellant claimed wage loss from July 1, 1998 to March 1, 1999. As this issue was not adjudicated by the Office, it is not an issue in the present appeal. See 20 C.F.R. § 501.2(c).

² A.M.A., *Guides* (4th ed. 1993).

³ *Id.* at 85, Table 64.

By decision dated April 9, 1999, the Office awarded appellant a seven percent impairment rating for her left leg.

The Board finds that appellant has failed to establish that she has more than a seven percent permanent impairment of the left leg for which she has received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,⁵ including that he or she sustained an injury in the performance of duty as alleged and that his or her disability, if any, was causally related to the employment injury.⁶

Under section 8107 of the Act⁷ and section 10.304 of the implementing federal regulations,⁸ 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 A.M.A., *Guides* as a standard for determining the percentage of impairment, and the Board has concurred in such adoption.⁹

In the present case, the only medical report of record that rated appellant based on her accepted left hip fracture was the Office medical adviser's November 3, 1998 report in which he found a one percent permanent impairment of the left lower extremity.¹⁰ The Office medical adviser applied the A.M.A., *Guides* to the description of appellant's discomfort, rated it as a Class 2 normal sensation, except for pain or decreased sensation with or without pain forgotten during activity, and rated her impairment at 25 percent sensory impairment.¹¹ The doctor then multiplied 25 percent with 2 percent for mild femoral nerve weakness¹² to determine that appellant had a 1 percent impairment of the left lower extremity. Inasmuch as the Office awarded appellant a seven percent permanent impairment of appellant's left leg and that the record contains no medical evidence, correctly based on the A.M.A., *Guides*, which establishes

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

⁶ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ 20 C.F.R. § 10.304.

⁹ *James A. England*, 47 ECAB 115 (1995).

¹⁰ The Board notes that Dr. McCraney's January 22, 1998 report of a seven percent disability rating for her hip fracture was not based on the A.M.A., *Guides*. Further, the Board notes that his November 20, 1998 report was not based on appellant's work-related injury, but rather was based on simple ishial bursitis or chronic trochanteric bursitis. Thus neither of his reports were of probative value in this case.

¹¹ *Id.* at 151, Table 20.

¹² *Id.* at 89, Table 68.

that appellant has a greater than seven percent permanent impairment of the left leg based on her work-related left hip fracture, the Board finds that appellant failed to establish entitlement greater than the percent of permanent impairment for which she has received a schedule award.

The April 9, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
September 5, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member