

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT DOTSON and U.S. POSTAL SERVICE
IRVING PARK STATION, Chicago, IL

*Docket No. 00-2567; Submitted on the Record;
Issued August 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a five percent permanent impairment of each of his legs, for which he received a schedule award.

On November 23, 1998 appellant, then a 54-year-old postal worker indicated that he sustained right and left heel spurs due to his employment. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral heel calcaneal spurs. Appellant received appropriate compensation.

On July 8, 1999 the Office requested that appellant's physician provide an assessment of permanent impairment for purposes of a schedule award.

Dr. Michael Warheit, a podiatrist, examined appellant on June 26, 1999. He noted that the average range of dorsi-plantar flexion was 60 degrees and that appellant could dorsi-flex to 10 degrees and plantar flex to 30 degrees. Dr. Warheit noted that the average range of inversion/eversion was 50 degrees and that appellant could invert from neutral to 15 degrees and evert from neutral to 10 degrees. He did not indicate that ankylosis was present and estimated that appellant had an additional impairment of function due to weakness, atrophy, pain or anesthesia of 50 percent. Dr. Warheit recommended a rating of 50 percent of the feet (lower extremity).

In a report dated July 16, 1999, Dr. Warheit indicated that appellant was suffering from calcaneal spurs and a contracted plantar fascia. He indicated that appellant was responding positively to conservative treatment. In a July 27, 1999 attending physician's report, CA-20, Dr. Warheit checked the "yes" box that appellant's condition was caused or aggravated by his employment and wrote in "20 years of mail delivery."

In a September 9, 1999 report, Dr. Warheit, estimated that appellant was 60 percent disabled on the left foot and 40 percent on the right foot.

In a November 14, 1999 report, an Office medical adviser reviewed the reports of Dr. Warheit and calculated the percentage of impairment of the right and left legs. According to Table 68 (p. 3/89) of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ appellant had a five percent impairment of the lower extremities for severe dysesthesia in the distribution of bilateral medial plantar nerves. He recommended that the claimant receive a full five percent rating for both lower extremities due to appellant's pain level. Dr. Warheit indicated that appellant's date of maximum medical improvement was June 26, 1999.

By decision dated December 7, 1999, the Office issued a schedule award for a five percent permanent impairment to each of appellant's lower extremities. The award covered a period of 28.80 weeks from June 26, 1999 to January 14, 2000.

By letter dated June 5, 2000, appellant requested reconsideration submitted a May 3, 2000 report from Dr. Warheit. He indicated that appellant related numbness and tingling after periods of walking and had an analgic gait after standing or walking for certain periods of time. Dr. Warheit noted that appellant had decreased muscle strength (3+) in ankle plantar flexion of both feet, probably due to the pain involved. He concluded that appellant had mild sensory deficit. Although he stated that he reviewed the A.M.A., *Guides*, Dr. Warheit did not refer to the A.M.A., *Guides* in estimating impairment.

The Office forwarded the new information to an Office medical adviser who reviewed the information on July 23, 2000. The Office medical adviser found that the new information did not warrant an additional increase in appellant's rating and again refers to the A.M.A., *Guides* in estimating appellant's impairment. He did not see any reason for further awards to either extremity.

In a July 31, 2000 merit decision, the Office denied modification of its prior order.

The Board finds that appellant has no more than a five percent impairment of each of his lower extremities.

Section 8107 of the Federal Employees' Compensation 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

¹ A.M.A., *Guides*, (4th ed. 1993).

² 5 U.S.C. § 8107.

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

In this case, the five percent schedule award was based on the November 14, 1999 and July 23, 2000 reports of the Office's medical adviser, who reviewed the May 3, 2000, September 9 and June 26, 1999 findings of appellant's then treating physician, Dr. Warheit.

In his June 26, 1999 report, Dr. Warheit recommended an impairment rating of 50 percent, but did not refer to the A.M.A., *Guides*. In his September 9, 1999 report, Dr. Warheit indicated that appellant was 60 percent disabled on the left foot and 40 percent on the right foot but did not explain how he derived these figures. Finally, in his May 3, 2000 report, Dr. Warheit noted that he had reviewed the A.M.A., *Guides*, but he did not give any percentage of impairment and again failed to reference page numbers or tables in the A.M.A., *Guides*.

The Office medical adviser reviewed the reports of Dr. Warheit and referenced the A.M.A., *Guides* to compute the percentage of permanent impairment. The Office medical adviser reviewed the record and in a July 23, 2000 report, noted that Table 68, page (3/89) of the A.M.A., *Guides* was the applicable table for lower extremity nerve deficits. The medical adviser indicated that his earlier correspondence recommended a five percent impairment of bilateral lower extremities for Grade V pain in the distribution of the medial plantar nerve bilaterally, which was equivalent to a seven percent impairment of bilateral feet. He noted that he did not see any indication for further impairment awards for either extremity according to the A.M.A., *Guides*. The medical adviser correctly applied the A.M.A., *Guides* to determine that appellant had a 5 percent impairment to each of his legs.

The July 31, 2000 and December 7, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 8, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member