U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARENCE W. HELMS and DEPARTMENT OF THE AIR FORCE, VIRGINIA AIR NATIONAL GUARD, Richmond, VA

Docket No. 01-155; Submitted on the Record;
Issued August 20, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a greater than seven percent permanent impairment of his right lower extremity for which he received a schedule award.

On July 9, 1997 appellant, then a 49-year-old air craft technician, filed a traumatic injury claim (Form CA-1) alleging that he sprained his right ankle while stepping off an aircraft boarding ladder. The Office of Workers' Compensation Programs accepted the claim for right ankle sprain and fracture of the talus.

On December 17, 1997 appellant filed a claim for a schedule award.

In a report dated November 11, 1997, Dr. Stanley M. Elmore, an attending physician, noted full range of motion in the ankle and an occasional limp. He then estimated a 20 percent permanent impairment of the right leg in reports dated November 11 and December 9, 1997 and February 26, 1998. In a report dated March 25, 1998, Dr. Elmore indicated that appellant had reached maximum medical improvement.

In a report dated June 10, 1999, Dr. William D. Henceroth, II, a Board-certified surgeon, diagnosed osteochondritis dessicans, right talus. Based upon a physical examination, he noted that appellant had 10 degrees of extension and 30 degrees of flexion of the right ankle and that he "ambulated with a mild limp on the right side." Dr. Henceroth estimated, based upon an antalgic gait, that appellant had a 17 percent permanent impairment.

In a report dated July 9, 1998, the Office medical adviser found that appellant reached maximum medical improvement on July 9, 1998 and that he sustained a seven percent right lower extremity impairment. Based on Dr. Henceroth's report and Table 42 at page 78 of the A.M.A., *Guides*, he determined that appellant had a seven percent impairment based upon ankle extension of 10 degrees and a 0 percent impairment based on ankle flexion of 30 degrees.

By decision dated August 22, 2000, the Office granted appellant a schedule award for a seven percent permanent impairment of the right lower extremity in the amount of $11,544.64.[1] The period of the award ran 20.16 weeks from January 31 to June 21, 1999. The Office awarded appellant 75 percent of his weekly pay rate of $754.00 for the period of the award.[2]

The Board finds that appellant sustained no more than a seven percent impairment of the right lower extremity for which he received a schedule award.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.[3] Where the loss of use is less than 100 percent the amount of compensation is paid in proportion to the percentage loss of use.[4] The Act, however, does not specify the manner in which the percentage 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.[5] However, as a matter of administrative practice, the Board has stated: "For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants."[6]

Section 8107 of the Act[7] provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[8] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as a standard for evaluating schedule losses and the Board has concurred in such adoption.[9]

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

[1] The Board notes that the record contains evidence regarding another claimant.

[2] Subsequent to the Office's decision, appellant requested an oral hearing, which the Office denied on November 29, 2000.

[3] 5 U.S.C. § 8107.

[4] *Id*. at § 8107(c)(19).

[5] *Andrew Arron, Jr*., 48 ECAB 141 (1996)

[6] *Id.*

[7] 5 U.S.C. §§ 8101-8193, 8107.

[8] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

[9] *Theresa Goode*, 51 ECAB ____ (Docket No. 99-1831, issued September 12, 2000); *A. George Lampo*, 45 ECAB 441, 443 (1994).

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.[10]

The Board finds that the Office properly determined that appellant has a seven percent impairment of his right lower extremity and that the schedule award covers 20.16 weeks from January 31 to June 21, 1999. In his report dated June 10, 1999, Dr. Henceroth stated that appellant's right ankle extension was 10 degrees and flexion was 30 degrees. He recommended a 17 percent total permanent impairment rating in his report dated June 10, 1999. However, Dr. Henceroth did indicate what section of the A.M.A., *Guides* he utilized when assessing appellant's impairment at 17 percent. Dr. Elmore's reports are also insufficient, as his reports do not reference the A.M.A., *Guides*. Thus, the Office properly referred the case record to the Office medical advisor for his opinion.[11]

In his report dated August 10, 2000, the Office medical adviser relied upon Dr. Henceroth's clinical findings, but recommended a seven percent permanent impairment rating for appellant's right lower extremity utilizing Table 62 at page 78. Table 42 evaluates ankle motion impairment and allows a maximum of seven percent lower extremity impairment for a mild impairment of extension motion loss. Under the Act, a 7 percent permanent impairment rating of the right lower extremity results in a schedule award of 20.16 weeks.[12] By multiplying appellant's 7 percent permanent impairment rating by 288, the maximum number of weeks for which as schedule award may be paid for the loss of use of the leg, the Office properly determined that appellant was entitled to a schedule award for 20.16 weeks. The Office properly followed the recommendation of its medical consultant in granting appellant's schedule award since the consultant was the only physician who properly utilized the A.M.A., *Guides*. There is no medical evidence of greater impairment.

[10] *See Paul R. Evans*, 44 ECAB 646, 651 (1993); *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

[11] *Louis Chapa, Jr.*, 41 ECAB 159 (1989).

[12] 5 U.S.C. § 8107(c)(2).

The decision of the Office of Workers' Compensation Programs dated August 22, 2000 is hereby affirmed.[13]

Dated, Washington, DC
August 20, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[13] The Board and the Office cannot have jurisdiction over the same case at the same time; *see Arlonia B. Taylor*, 44 ECAB 591, 597 (1993). The appeal in the instant case was filed with the Board on October 6, 2000. Accordingly, the Office's decision dated November 29, 2000 is null and void. The Board further notes that additional evidence was received by the Office subsequent to the August 22, 2000 decision. The Board does not have jurisdiction to consider evidence that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from resubmitting his request for reconsideration to the Office.