

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MILDRED J. BOURQUE and U.S. POSTAL SERVICE,
BLUE BONNET FACILITY, Baton Rouge, LA

*Docket No. 00-449; Submitted on the Record;
Issued February 6, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant has no more than a 25 percent permanent impairment of her left lower extremity for which she received a schedule award.

On July 25, 1998 appellant, then a 55-year-old computer forwarding clerk, sustained a fractured left ankle when she slipped on a broken curb in the employing establishment parking lot. Appellant stopped work on July 26, 1998 and returned to limited-duty work on November 18, 1998. The Office accepted appellant's claim for a left ankle fracture and open reduction with internal fixation.

On June 24, 1999 appellant filed a schedule award claim (Form CA-7) and submitted an April 14, 1999 report, in which Dr. Andrew T. Kucharchuk, a Board-certified orthopedic surgeon, provided a history of appellant's July 25, 1998 employment injury, stated his examination findings and noted appellant's subjective complaints. Dr. Kucharchuk noted that appellant developed a limp and as a result developed left hip, lower back and sacral iliac joint problems. He also noted dorsalkyphosis and marked pain to palpation of the lumbosacral junction and right SI joint. Dr. Kucharchuk diagnosed osteoarthritis of the lumbar spine, SI joint and left talar tibial joint and posterior tibial nerve palsy secondary to a pronation abduction left ankle fracture.

Dr. Kucharchuk attributed an 8 percent whole person impairment rating to appellant's arthritis, 7 percent to her gait limitation, 1 percent to her SI joint arthritis and an additional 4 percent to her medial and lateral plantar nerve palsies, equaling a 20 to 21 percent body impairment. He stated that he relied upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1995).

Appellant also submitted an estimated functional capacity form dated April 14, 1999, in which Dr. Kucharchuk stated that she could occasionally lift/carry up to 10 pounds, occasionally push/pull while seated and standing and frequently push/pull above the shoulder level. He also

advised that appellant could sit, stand and walk fewer than 10 minutes during an 8-hour day and that she was able to use her right foot for repetitive movements.

Additionally, appellant submitted a June 16, 1999 addendum from Dr. Kucharchuk, in which he stated that appellant had reached maximum medical improvement but that she may need further ankle surgery.

By letter dated July 7, 1999, the Office advised Dr. Michael Frierson, a Board-certified orthopedic surgeon and appellant's treating physician, of its method for quantifying permanent impairments of the lower extremity according to the A.M.A., *Guides*. The Office requested that he render impairment ratings, provide the date on which appellant reached maximum medical improvement and describe appellant's subjective complaints. Dr. Frierson did not respond to the Office's request.

In a July 29, 1999 report, Dr. H. Mobley, an Office medical adviser, found that appellant reached maximum medical improvement on June 16, 1999 and sustained a 25 percent left lower extremity impairment. Based on Dr. Kucharchuk's reports and Tables 11, 62, 68 and Figure 59 of the A.M.A., *Guides*,¹ Dr. Mobley determined that appellant had a 20 percent left lower extremity impairment for arthritis and 3 percent left lower extremity impairments for medial and lateral plantar nerve dysesthesia. He combined those losses for a 25 percent total permanent impairment rating.

By decision dated August 18, 1999, the Office granted appellant a schedule award for a 25 percent permanent impairment of her left lower extremity in the amount of \$38,157.84. The period of the award ran for 72 weeks from June 16, 1999 to August 14, 2000.

The Board finds that appellant sustained no more than a 25 percent impairment of the left lower extremity for which she received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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. The A.M.A., *Guides* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating scheduled losses.⁴ While a schedule award is not payable under the Act for an impairment of the back, a schedule award is payable for a permanent impairment of the legs that is due to an employment-related back condition.⁵

¹ A.M.A., *Guides*, 48, 83, 89, 93.

² 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.404.

⁴ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

⁵ *Denise D. Cason*, 48 ECAB 530, 531 (1997); *S. Gordon McNeil*, 42 ECAB 140 (1990).

The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the injury.⁶ Thus, an employee is not eligible to receive a schedule award until he or she has reached maximum medical improvement. Maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.⁷ The question of when maximum medical improvement has been reached is a factual one depending upon the medical findings in the record.⁸

In this case, the Board finds that the Office medical adviser properly rated appellant's impairment under the A.M.A., *Guides*. In his July 29, 1999 report, Dr. Mobley relied on Dr. Kucharchuk's clinical findings but recommended a 25 percent permanent impairment rating for appellant's left lower extremity, due to arthritis and sensory loss, by combining appellant's 1 millimeter cartilage interval, medial and lateral plantar dysesthesia and pain or sensory impairment. Dr. Mobley properly excluded appellant's SI joint arthritis because it is not an accepted employment-related condition and her gait derangement because, under the A.M.A., *Guides*, such impairment may not be combined with other lower extremity impairment ratings.⁹ Dr. Mobley's 25 percent total permanent impairment rating conforms to the A.M.A., *Guides*, Tables 11, 62, 68, Figure 59 and the Combined Values Chart.¹⁰

The August 18, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 6, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ *Eugenia L. Smith*, 41 ECAB 409, 413 (1990); *Yolanda Librera*, 37 ECAB 388 (1986).

⁷ *Joseph R. Waples*, 44 ECAB 936, 940 (1993); *Marie J. Born*, 27 ECAB 623, 629 (1976).

⁸ *Joseph R. Waples*, *supra* note 7 at 940; *Marie J. Born*, *supra* note 7 at 630.

⁹ A.M.A., *Guides* 75.

¹⁰ A.M.A., *Guides* 48, 83, 89, 93, 322-23.