

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CARL E. CURRY and DEPARTMENT OF THE ARMY,  
RED RIVER ARMY DEPOT, Texarkana, TX

*Docket No. 99-714; Submitted on the Record;  
Issued February 12, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has established that he has more than a nine percent left lower extremity impairment and a nine percent right lower extremity impairment, for which he has received a schedule award.<sup>1</sup>

The Board has duly reviewed the case record and finds that this case is not in posture for decision.

On November 5, 1997 appellant, then a 48-year-old former federal employee, filed a claim for schedule award using October 16, 1990 as the first date of the period of wage loss.<sup>2</sup>

Section 8107 of the Federal Employees' Compensation Act provides that, if there is a permanent impairment 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.<sup>3</sup> 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*

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<sup>1</sup> In a decision dated December 31, 1996, the Board set aside and remanded appellant's initial claim for compensation on the issue of whether his left foot surgery was causally related to his employment, Docket No. 95-309. After further development, the Office of Workers' Compensation Programs, by decision dated October 30, 1997, accepted appellant's claim for bilateral hallux rigidus limitus, aggravation of bilateral osteoarthritis of feet and ankles, his October 10, 1996 surgery for bunionectomy with fixation left foot and his October 2, 1995 surgery for bilateral bunionectomy. Appellant's date of injury was October 16, 1990. Appellant subsequently filed the current claim for a schedule award. Appellant retired on January 3, 1995.

<sup>2</sup> On that date appellant underwent left foot surgery.

<sup>3</sup> 5 U.S.C. § 8107.

*Evaluation of Permanent Impairment* as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>4</sup>

On March 25, 1998 the Office requested a determination from Dr. Philip J. Hahn, Jr., appellant's attending podiatrist, regarding whether appellant had a permanent impairment.

In a medical report dated April 13, 1998, Dr. Hahn set forth his findings on examination of appellant and estimated appellant had an 11 percent impairment of the left lower extremity and a 13 percent impairment of the right lower extremity. On April 28, 1998 he stated that appellant no longer had pain on range of motion and on that date had reached his date of maximum medical improvement.

On June 15, 1998 the Office referred appellant, a statement of accepted facts and his medical record to Dr. Barry M. Green, Board-certified in orthopedic surgery and a second opinion consultant, for a determination regarding appellant's percent of impairment.

In a medical report dated July 8, 1998, Dr. Green stated that he was familiar with appellant's statement of accepted facts and his medical history. Upon examination he noted that appellant's range of motion of the hips, knees, ankles and toes was normal "with the exception of his great left toes which have decreased motion bilaterally." Dr. Green also noted a well-healed four centimeter medial right foot scar and a well-healed seven centimeter medial left foot scar. Appellant's strength limits were within normal limits, although he noted that appellant was unable to walk on his heels and toes or squat. Sensation was unremarkable and appellant had no limp or list. Dr. Green noted normal pulse and Babinski reflex and no ankle clonus. He noted patella reflexes as two plus bilaterally and Achilles' reflexes as one plus bilaterally. Appellant's Fabre's test was noted as negative bilaterally and his straight leg raising in the sitting position was 90 degrees bilaterally and in the supine position 70 degrees bilaterally. Trochanteric pressure, Hoover's test and Waddell's sign were negative bilaterally. Dr. Green diagnosed appellant with "callosity, bilateral feet and status post multiple surgical procedures, feet bilaterally." Based on the A.M.A., *Guides*, Table 61, he stated that appellant had a nine percent left lower extremity impairment and a nine percent right lower extremity impairment. Dr. Green agreed with appellant's treating podiatrist that his date of maximum medical improvement was April 28, 1998.

In a medical report dated July 16, 1998, the Office medical adviser agreed with Dr. Green's determination that appellant had a nine percent left lower extremity impairment and a nine percent right lower extremity impairment and that appellant's date of maximum medical improvement was April 28, 1998.

By decision dated July 23, 1998, the Office granted appellant a schedule award for nine percent permanent impairment to the left lower extremity and nine percent permanent impairment to the right lower extremity.

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<sup>4</sup> *James J. Hjort*, 45 ECAB 595 (1994).

Section 8123 of the Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>5</sup>

As a conflict in medical opinion exists between Dr. Hahn, appellant's attending podiatrist, who found an 11 percent impairment of the left leg and a 13 percent impairment of the right leg and Dr. Green, the Office referral physician, who found a nine percent impairment in both extremities, this case must be remanded for further development of the medical evidence. Upon remand, the Office shall refer appellant to an impartial medical specialist to resolve whether appellant has greater than a nine percent impairment of his left lower extremity and a nine percent impairment of his right lower extremity due to his accepted medical conditions, pursuant to the A.M.A., *Guides*. After such further development as necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated July 23, 1998 is hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.<sup>6</sup>

Dated, Washington, DC  
February 12, 2001

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> *Shirley L. Steib*, 46 ECAB 309 (1994).

<sup>6</sup> The Board notes that on appeal appellant has questioned the date of the commencement of the award. In the *Marie J. Born* decision, the Board reviewed the well-settled rule that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement and explained that maximum medical improvement "means that the physical condition of the injured member of the body has stabilized and will not improve further." 27 ECAB 623 (1968).