

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHYLLIS F. CUNDIFF and DEPARTMENT OF THE ARMY,
NAVAL WEAPONS SUPPORT CENTER, Crane, IN

*Docket No. 00-1750; Submitted on the Record;
Issued July 12, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained more than a 30 percent permanent impairment of the right lower extremity for which she received a schedule award.

The Board has duly reviewed the case record in this appeal and finds that appellant sustained no more than a 30 percent permanent impairment of the right lower extremity for which she received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulations² 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 loss of a member 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, the A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

This is the second appeal in this case.⁴ By decision dated April 1, 1996, the Board remanded the case for further development of the medical evidence. The facts of this case are set forth in the Board's April 1, 1996 decision and are incorporated herein by reference.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

⁴ *See* Docket No. 94-769 (issued April 1, 1996).

On May 10, 1990 appellant, then a 51-year-old explosives worker, sustained burns to the left hand, left thigh and both ankles when two hand grenades exploded. The Office of Workers' Compensation Programs subsequently accepted deep venous thrombosis of the right calf as related to the May 10, 1990 employment injury. By decision dated March 22, 2000, the Office granted appellant a schedule award for 86.40 weeks based upon a 30 percent permanent impairment of the right lower extremity.⁵

In a report dated June 10, 1996, Dr. Donald Beemblossom, appellant's attending physician, opined that appellant had a 60 percent permanent impairment of the whole person. However, a schedule award is not payable under the Act for an impairment of the whole person.⁶

In a report dated June 11, 1996, Dr. John D. Lockenour, a chiropractor, opined that appellant had a 40 to 60 percent impairment of the whole person based upon Table 14 at page 198 of the A.M.A., *Guides*. However, under section 8101(2) of the Act, chiropractors are only considered physicians, and their reports considered medical evidence only to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.⁷ Therefore, Dr. Lockenour's report has no probative value on the issue of appellant's entitlement to a schedule award for the right lower extremity.⁸ Also, as noted previously, schedule awards are not payable under the Act for an impairment of the whole person.

In reports dated March 4 and April 29, 1999, Dr. Dennis M. Jacob, a Board-certified physician specializing in peripheral vascular surgery and an Office referral physician, stated that a venogram confirmed the presence of venous insufficiency bilaterally with reflux and his physical examination on February 11, 1999 showed mild pitting edema (swelling) to both lower extremities, worse on the left leg. He opined that appellant had a 10 to 39 percent impairment of the whole person based on the objective findings of edema with definite venous insufficiency on venogram and Table 14 at page 198 of the A.M.A., *Guides*, fourth edition.

⁵ The Board notes that the Office has not issued a final decision regarding appellant's claim for a schedule award for the left lower extremity and therefore the Board has no jurisdiction to consider this issue. 20 C.F.R. § 501.2(c). Upon return of this case record, the Office should proceed with adjudication of appellant's claim for a schedule award for the left lower extremity.

⁶ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

⁷ 5 U.S.C. § 8107(a); see *Jack B. Wood*, 40 ECAB 95, 109 (1988).

⁸ See *George E. Williams*, 44 ECAB 530, 533-34 (1993).

In a report dated November 29, 1999, Dr. Jacob stated that venograms performed on appellant were consistent with venous insufficiency. He stated:

“In addition, on receipt of Table 14 and Table 69, which you ... [sent] me, according to your letter your question was ... whether [appellant] has residual impairment due to the [May 10, 1990 employment] injury. Again, I believe the answer is yes. According to the question, the impairment must be correlated with [the A.M.A., *Guides*, 4th ed. 1993]. There is no obvious set of guidelines to exactly determine the amount of impairment, but I would estimate the impairment at approximately 30 [percent] of the right lower extremity. The left lower extremity was determined to also have venous insufficiency, although it has never been diagnosed to the best of my knowledge as deep venous thrombosis, although it too was injured at the time of the accident.”

In a report dated February 15, 2000, Dr. Nabil F. Angley, a Board-certified orthopedic surgeon and an Office medical consultant, stated his agreement with the 30 percent permanent impairment of the right lower extremity as determined by Dr. Jacob. This correlates with a class 2 impairment of the lower extremity due to peripheral vascular disease.

Dr. Jacob correctly determined that appellant sustained a 30 percent permanent impairment of the right lower extremity based upon Table 14 at page 198 of the A.M.A., *Guides*, fourth edition. The Office medical consultant concurred. There is no medical evidence of record, based upon correct application of the A.M.A., *Guides*, which establishes that appellant sustained more than a 30 percent permanent impairment of the right lower extremity.

The decision of the Office of Workers' Compensation Programs dated March 22, 2000 is affirmed.

Dated, Washington, DC
July 12, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member