

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHEN D. EVERETT and DEPARTMENT OF THE NAVY,
NAVAL SEA SYSTEMS COMMAND, Philadelphia, PA

*Docket No. 99-1987; Submitted on the Record;
Issued June 8, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has greater than a 19 percent permanent impairment to his left lower extremity for which he received a schedule award and whether he is entitled to a schedule award for his right lower extremity.

The Board has duly reviewed the case record and concludes that appellant has no greater than a 19 percent permanent impairment to his left lower extremity and is not entitled to a schedule award for his right lower extremity.

The Office of Workers' Compensation Programs accepted appellant's claim for multiple contusions and fractures for the left ankle, the left wrist, a spinal burst fracture at the L1 level, with reparative lumbar fusion, postconcussion syndrome and prolonged depression.

In a report dated May 6, 1986, appellant's treating physician, Dr. David Weiss, an osteopath, considered appellant's history of injury, performed a physical examination, reviewed the diagnostic tests of record including x-rays and computerized axial tomography (CAT) scans and performed gross motor strength testing of the right and left lower extremities. He diagnosed, *inter alia*, status postmultiple trauma, status postburst fracture at L1 to the lumbar spine, status postposterior lateral fusion and status post fracture the left ankle joint. Dr. Weiss also diagnosed chondromalacia to the right knee, secondary to altered body mechanics and discoid medial and lateral meniscus secondary to altered body mechanics to the right knee. He stated that the July 5, 1989 employment injury "was the competent producing factor for" appellant's "subjective and objective findings." Using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994), Table 62, page 83, Dr. Weiss found that appellant had a 5 percent permanent impairment to his right lower extremity based on right knee crepitation. Using Table 37, page 77 of the A.M.A., *Guides* (4th ed. 1994), he found that appellant had left calf atrophy of 13 percent and using Table 42, page 78, he found that appellant's range of motion deficit of the left ankle dorsiflexion was 7 percent. Dr. Weiss added the 13 percent and 7 percent figures to obtain a 20 percent permanent impairment to appellant's left lower extremity.

In a note dated July 6, 1998, the district medical adviser reviewed Dr. Weiss' findings and stated that a schedule award for the right knee was not applicable since the right knee condition was not an accepted injury. The district medical adviser also stated that the figures Dr. Weiss obtained for appellant's left lower extremity, 13 percent and 7 percent, should be combined using the Combine Values Chart of the A.M.A., *Guides* (4th ed. 1994), page 323, to obtain a 19 percent permanent impairment of the left leg.

By decision dated July 31, 1998, the Office issued a schedule award for a 19 percent impairment to the left leg.

Appellant requested an oral hearing before an Office hearing representative, which was held on February 9, 1999. At the hearing, he described the circumstances of the July 5, 1989 employment injury, his current job repairing computers at a manufacturing firm and his current symptoms. Appellant stated that he had his most trouble in pivoting actions and had trouble climbing ladders with his left ankle and right knee. He also stated that he had pain in his back, which occasionally radiated into his legs. At the hearing, appellant stated he sought a schedule award for a 20 percent impairment to his left lower extremity. He also sought a schedule award to his right lower extremity.

By decision dated March 25, 1999, the Office hearing representative affirmed the Office's July 31, 1998 decision.

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies 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 does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² 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.³

In the present case, appellant's treating physician, Dr. Weiss properly used the A.M.A., *Guides* (4th ed. 1994), in determining that appellant had a 13 percent impairment for left calf atrophy pursuant to Table 37, page 77 and had a 7 percent impairment of the range of motion deficit of the left ankle dorsiflexion pursuant to Table 42, page 78. According to the district medical adviser, however, Dr. Weiss erred in adding the 13 percent and 7 percent figures to obtain an impairment of 20 percent instead of using the Combined Values Chart, page 323, of the A.M.A., *Guides* (4th ed. 1994) to obtain a 19 percent impairment rating for appellant's left lower extremity. The district medical adviser's calculation of appellant's percentage of impairment is

¹ 5 U.S.C. § 8107 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

³ *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

consistent with the A.M.A., *Guides* (4th ed. 1994), page 78. Although on appeal, appellant contends that a conflict exists between Dr. Weiss' opinion and that of the district medical adviser, the difference in their opinions is not sufficient to create a conflict as Dr. Weiss merely failed to add up the impairment to appellant's left ankle and left calf in accordance with the Combine Values Chart in the A.M.A., *Guides* (4th ed. 1994). Further, as the district medical adviser found, appellant's accepted injuries did not include his right knee so he is not entitled to a schedule award for that part of his body.⁴

The decisions of the Office of Workers' Compensation Programs dated March 25, 1999 and July 31, 1998 are hereby affirmed.

Dated, Washington, DC
June 8, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁴ See *Duane B. Harris*, 49 ECAB 170, 172 (1997).