

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN C. WHITE and U.S. POSTAL SERVICE,  
POST OFFICE, Milford, CT

*Docket No. 01-825; Submitted on the Record;  
Issued October 16, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 10 percent impairment of his left lower extremity, for which he received a schedule award.

On October 24, 1998 appellant, a 50-year-old letter carrier, hurt his left ankle while in the performance of duty. Appellant ceased working on October 25, 1998 and he returned to work on December 7, 1998. The Office of Workers' Compensation Programs accepted appellant's claim for left ankle sprain.

By decision dated February 22, 2000, the Office granted appellant a schedule award for a 10 percent permanent impairment of his left lower extremity. The award covered 28.8 weeks.

On April 5, 2000 appellant requested reconsideration, arguing that he was entitled to an additional award for a 14 percent permanent impairment of his left foot as indicated by the Office medical adviser in his February 9, 2000 report.

In a decision dated July 12, 2000, the Office denied modification of the February 22, 2000 schedule award. The Office explained that the 14 percent permanent impairment of appellant's left foot, as identified by the Office medical adviser was previously accounted for in the 10 percent impairment rating appellant received for his left lower extremity.

The Board finds that appellant has not established that he has more than a 10 percent permanent impairment of his left lower extremity.

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> sets forth 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, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal

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<sup>1</sup> 5 U.S.C. § 8107.

justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Act's implementing regulation has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.<sup>2</sup>

Appellant's treating physician, Dr. John D. McCallum, and the Office medical adviser both determined that appellant had a 14 percent permanent impairment of his left foot in accordance with Table 64 at page 85-86 of the A.M.A., *Guides* (4<sup>th</sup> ed. 1993). However, unlike Dr. McCallum, the Office medical adviser further noted that appellant's foot injury represented a 10 percent impairment of the lower extremity. Under Table 64, a 14 percent impairment of the left foot due to moderate ligamentous instability of the ankle corresponds to a 10 percent impairment of the left lower extremity, as correctly noted by the Office medical adviser.

Contrary to appellant's assertion, he is not entitled to a schedule award for a permanent impairment of his left leg and his left foot, as such an award would be duplicative. The Office twice explained to appellant that the 10 percent impairment rating for the left lower extremity included the 14 percent permanent impairment of the left foot.

Inasmuch as the Office medical adviser's calculation of appellant's left lower extremity impairment conforms to the A.M.A., *Guides* (4<sup>th</sup> ed. 1993), his finding constitutes the weight of the medical evidence.<sup>3</sup> Accordingly, appellant has failed to provide any probative medical evidence that he has greater than a 10 percent impairment of the left lower extremity.<sup>4</sup>

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<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

<sup>4</sup> The Act provides that, for a total, or 100 percent loss of use of a leg, an employee shall receive 288 weeks of compensation. 5 U.S.C. § 8107(c)(2). In the instant case, appellant does not have a total, or 100 percent loss of use of his left lower extremity, but rather a 10 percent loss. As such, appellant is entitled to 10 percent of the 288 weeks of compensation, which is 28.8 weeks. In comparison, a total or 100 percent loss of use of a foot corresponds to 205 weeks of compensation. 5 U.S.C. § 8107(c)(4). Had the Office calculated a schedule award based upon appellant's 14 percent impairment of the left foot, rather than a 10 percent impairment of the left leg, appellant would have received only 28.7 weeks of compensation.

The July 12, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
October 16, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Priscilla Anne Schwab  
Alternate Member