

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD L. McCURDY and U.S. POSTAL SERVICE,
POST OFFICE, Sacramento, CA

*Docket No. 00-1577; Submitted on the Record;
Issued September 14, 2001*

DECISION and ORDER

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

The issue is whether appellant established a permanent impairment of the left lower extremity entitling him to a schedule award under 5 U.S.C. § 8107.

On January 28, 1997 appellant, a 38-year-old clerk, filed an occupational disease claim alleging that he sustained injuries to his left leg due to prolonged periods of standing. The Office of Workers' Compensation Programs accepted appellant's claim for temporary aggravation of varicose veins with rupture. Appellant returned to limited-duty work and on May 21, 1999, he accepted a permanent limited-duty assignment as a modified window clerk, with restrictions of no more than two hours combined walking and standing. The Office later determined that the position was suitable to appellant's work capabilities.

On June 9, 1999 appellant filed a claim for a schedule award. By letter dated June 21, 1999, the Office advised appellant to schedule an appointment with his treating physician, Dr. Margaret Upson, for purposes of determining the extent and degree of permanent impairment of his left lower extremity resulting from his accepted employment injury. The Office also provided a questionnaire for Dr. Upson to complete regarding appellant's physical condition.

In a July 1, 1999 response, Dr. Upson diagnosed chronic venous stasis and reported that appellant had reached maximum medical improvement on June 19, 1997. She further indicated that appellant did not have muscle weakness or atrophy or any nerve root involvement. With respect to pain and discomfort, Dr. Upson reported "mild occasional discomfort." In a follow-up report dated October 20, 1999, Dr. Upson noted no changes from her prior examination and no ulcers. She further indicated that appellant should continue with his permanent work restrictions.

The Office referred the claim to its Office medical adviser, who in a report dated June 9, 1999, noted that, if this were a "temporary aggravation, there would be no permanent functional loss of the left lower extremity due to the temporary aggravation." (Emphasis in the original.) However, if the claim had been accepted for permanent aggravation, the Office medical adviser

indicated that he would recommend an award for a five percent lower extremity impairment due to peripheral vascular disease.

By decision dated February 9, 2000, the Office denied appellant's claim for a schedule award.

The Board finds that appellant failed to establish entitlement to a schedule award.

Section 8107 of the Federal Employees' Compensation Act¹ 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 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.²

In the instant case, appellant's treating physician did not provide an impairment rating. Although the Office medical adviser recommended an award for a five percent permanent impairment due to peripheral vascular disease, this recommendation was premised on the claim being accepted for a permanent aggravation rather than a temporary aggravation of appellant's vascular condition. With respect to the latter, the Office medical adviser specifically stated "there would be no permanent functional loss ... due to the temporary aggravation." In an earlier report dated December 1, 1997, Dr. Upson explained that appellant's "long-standing venous insufficiency and stasis dermatitis with recurrent ulcerations ... was not caused by his work duties." She further explained, however, that appellant's condition "was aggravated by the change from a sedentary to a standing job." Dr. Upson did not otherwise indicate whether appellant's employment exposure resulted in a temporary or permanent aggravation of his condition.

While the record includes evidence of a permanent impairment of the left lower extremity, appellant has failed to demonstrate that his accepted employment injury is the cause of his permanent impairment. Inasmuch as the claim was accepted for temporary aggravation of varicose veins with rupture and there is no evidence that appellant's accepted employment exposure resulted in a permanent aggravation of this condition, the Office properly determined that appellant was not entitled to a schedule award.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

The February 9, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 14, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member