U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of NANCY CADMAN and U.S. POSTAL SERVICE,
POST OFFICE, Racine, WI

*Docket No. 02-73; Submitted on the Record;*
*Issued December 4, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that she was entitled to a schedule award for permanent impairment of the left lower extremity causally related to her accepted work injury.

On January 7, 1997 appellant, then a 43-year-old letter carrier, twisted her left ankle while delivering mail in the performance of duty. She was seen in the emergency room and the ankle was x-rayed for a possible fracture. Appellant was treated by Dr. Byran Mikaelian, an orthopedic surgeon, for a left ankle sprain. She was placed first in a cast and then an ankle brace, and told to return to light duty. When appellant continued to have left ankle pain she sought treatment with Dr. John L. Trotter, a Board-certified orthopedic surgeon, who ordered a magnetic resonance imaging (MRI) scan and discovered that she had sustained an osteochondral fracture as a result of the January 7, 1997 work injury. Dr. Trotter performed surgery to repair the torn tendon on August 26, 1997. The Office of Workers' Compensation Programs accepted the claim for a left ankle sprain with arthroscopic surgery. Appellant later filed an occupational disease claim alleging that on December 23, 1997 as a consequence of the accepted ankle injury, she had to bend over to put on an ankle brace and strained her back. The Office therefore expanded appellant's claim to include an acute lumbosacral sprain. Appellant worked limited duty and received compensation for intermittent periods of wage loss. She accepted a new position as a modified distribution clerk effective September 26, 1998.

In a treatment note dated February 3, 1998, Dr. Trotter reported that appellant was five and one half months postsurgery, with her major complaint being pain throughout her body. He indicated that appellant complained of increased left ankle pain once the weather got colder. Physical findings included a normal gait, no evidence of clubbing cyanosis or inflammatory changes of the toes, no crepitus, no evidence of malalignment and good range of motion of the ankle without instability with only mild discomfort on extremes of plantar flexion. An x-ray showed some degenerative changes in the left ankle. Dr. Trotter stated that there was no evidence of disability although he recommended that appellant see a rheumatologist. He advised that appellant could return to work with restrictions for one week, then to regular duty as tolerated.

. A functional capacity evaluation was conducted on February 12, 1998 at the direction of Dr. Trotter. It was noted that appellant complained of numbness in the third, fourth and fifth toes (reaching from the scar region to the distal toes lateral aspect). There was noticable swelling of the left ankle reported, measured to be a +0.5 increase in her left ankle size. There was no significant sign of atrophy, minimal reduction in left ankle muscle strength when compared to the right ankle and minimal left lateral ankle tenderness per palpation. Left ankle dorsiflexion, plantar flexion, inversion and eversion were listed within normal limits at strength measurement of "5-/5." The functional capacity evaluation reported that appellant could perform light duty with restrictions.

Appellant filed a Form CA-7 claim for a schedule award on April 30, 1998.

In a treatment notes dated May 22, June 26, August 7 and September 18, 1998, Dr. Niedfeldt indicated that appellant had full range of motion of the left ankle with some tenderness over one centimeter scar area post "Brostrom-Gould ankle reconstruction." Anterior drawer and taler tilt were negative. Under Impression he listed: "(1) Status post Brostrum-Gould ankle reconstruction; and (2) Chronic scar pain.

In report dated November 4, 1998, Dr. Niedfeldt noted that appellant had pain with ambulation in the left ankle joint, loss of dorsifexion and was limited to light-duty work. He opined that appellant had 15 percent permanent disability. Dr. Niedfeldt noted that appellant could return to work effective September 18, 1998 as she had reached maximum medical improvement.

On April 26, 1999 the Office forwarded a copy of the case record to an Office medical adviser for calculation of the percentage of permanent partial impairment of the left lower extremity under the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.*

In a report dated January 23, 2000, Dr. David M. Smink, an Office medical adviser, noted that he had reviewed the medical record. He stated that there were no physical abnormalities noted on physical examination, full left ankle range of motion, no instability and that appellant was nontender to palpation. Under the fourth edition of the A.M.A., *Guides*, the Office medical adviser determined that appellant had zero percent permanent impairment of the left lower extremity and therefore was not entitled to a schedule award. The Office medical adviser indicated that appellant had reached maximum medical improvement one year after her surgery or by August 27, 1998.

In a decision dated May 12, 2000, the Office determined that appellant was not entitled to a schedule award because she had zero percent permanent impairment of the left ankle causally related to her accepted work injury.

By letter dated April 26, 2001, appellant requested reconsideration and submitted a March 28, 2001 report from Dr. Niedfeldt, in which the physician stated that appellant had ankle motion impairment in the mild category due to an eight percent deficit in range of motion and dorsiflexion.[1] Dr. Niedfeldt stated that appellant had 3 percent whole person impairment, 7

[1] Dr. Niedfeldt noted that he was referring to the prior functional capacity evaluation for range of motion and end-point ankle disability.

percent lower extremity impairment and 10 percent permanent foot impairment. He noted that appellant also continued to have ankle pain on a daily basis.

In accordance with established procedures, the Office sent a copy of Dr. Niedfeldt's March 28, 2001 report to an Office medical adviser to review and correlate with the fifth edition of the A.M.A., *Guides*.[2]

In a report dated May 2, 2001, the Office medical adviser stated as follows:

> "In his note dated [March 28, 2001], Dr. Niedfeldt refers to the functional capacity evaluation performed on February 12, 1998 as a basis for his PPI award. In that functional capacity evaluation, [appellant] did demonstrate diminished range of motion in the left ankle. However, she was only six months postop[erative] and certainly had residual stiffness from surgery. Furthermore, *following the functional capacity evaluation* in a note dated September 18, 1998, Dr. Niedfeldt even stated that the 'Physical exam[ination] of the left ankle revealed full range of motion. Anterior drawer and talar tilt are negative.' Thus, I would offer that in light of a more recent note by Dr. Niedfeldt, the functional capacity evaluation is invalid and should not be used a s a source of information when figuring PPI."

The Office medical adviser concluded that no schedule award could be issued for permanent impairment of the left lower extremity and listed date of maximum medical improvement as August 27, 1998.

In a decision dated May 14, 2001, the Office denied modification.

Appellant subsequently requested reconsideration on August 9, 2001. She submitted the following documents: a narrative statement dated August 3, 2001, medical reports dated November 4, 1998, March 3, 2000, September 18, August 7, June 26, May 22 and April 24, 1998, March 28, 2001 by Dr. Niedfeldt; a May 6, 1998 report by Dr. Trotter; a copy of the prior functional capacity evaluation performed on February 12, 1998; and a copy of the Office's May 14, 2001 decision.

In a decision dated August 29, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was repetitive and duplicative in nature, and therefore insufficient to warrant a merit review.

The Board finds that this case is not in posture for a decision.

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing federal regulation,[4] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members,

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[2] On January 29, 2001 the Office announced that effective February 1, 2001, all claims examiners and hearing representatives should begin utilizing the fifth edition of the A.M.A., *Guides*.

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[5] However, the Act does not specify the manner in which the percentage of loss 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[6]

The Office accepted that appellant sustained a left ankle sprain as a result of falling at work in the performance of duty on January 7, 1997. Although appellant has filed a claim for a schedule award for permanent impairment due to residuals of the left ankle injury, the Office has determined that she has zero permanent impairment based on the opinion of the Office medical adviser. She contends on appeal that the report of Dr. Niedfeldt should be credited and a schedule award issued on his finding of 15 percent impairment.

The Board, however, finds that the report of Dr. Niedfeldt is insufficient to establish that appellant has 15 percent impairment[7] of the left lower extremity since the physician relied on range of motion findings listed in the February 12, 1998 functional capacity evaluation that were not contemporaneous with his own determination as to the date of maximum medical improvement. Dr. Niedfeldt indicated that appellant reached maximum medical improvement on September 18, 1998, as she was approved for a return to work with restrictions. The contemporaneous treatment notes from Dr. Niedfeldt dated August 7 and September 18, 1998 list "full range of motion" and do not support his opinion that appellant has 15 percent permanent impairment due in part to impairment of range of motion of the left ankle.[8]

Furthermore, because Dr. Niedfeldt did not specifically reference his impairment rating with the appropriate pages of the A.M.A., *Guides*, the Office properly forwarded a copy of the medical record to an Office medical adviser for review and calculation of the degree of appellant's permanent impairment of the left lower extremity. It is well settled that, when an attending physician's report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*. Board cases are clear that, if an attending physician does not utilize the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment.

After reviewing the physical findings obtained by Dr. Niedfeldt, the Office medical adviser found that appellant had zero percent impairment of the left leg due to the accepted work

[5] 5 U.S.C. § 8107(c)(19).

[6] *See* 20 C.F.R. § 10.404 (1999).

[7] Dr. Niedfeldt did not specify whether or not the 15 percent impairment was for lower extremity impairment of whole man impairment. The Act does not provide for permanent impairment for the whole person. *See John Yera*, 48 ECAB 243 (1996).

[8] Dr. Niedfeldt stated that appellant had dorsiflexion impairment but he did not reference any specific physical or clinical findings to corroborate his opinion. The Board notes that the functional capacity evaluation measurement for dorsiflexion was within normal limits at 5-/5, which does not establish an impairment due to muscle weakness of the lower extremity according to Tables 38 and 39, pages 3/77 of the A.M.A., *Guides*.

injury. The Board notes, however, that in evaluating the physical findings by the examining physician, the Office medical adviser did not take into consideration appellant's complaints of pain. Dr. Niedfeldt noted in several treatment notes that appellant had chronic pain. In his November 4, 1998 report, appellant was noted to suffer from pain in the left ankle joint with walking.

A specific change in the fifth edition of the A.M.A., *Guides* is that it allows for an impairment percentage to be increased by up to three percent for pain by using the pain chapter. A qualitative method for evaluating impairment due to chronic pain is included in Chapter 18. If an individual appears to have pain-related impairment that has increased the burden or his or her condition slightly, the examiner may increase the percentage up to three percent. If the examiner performs a formal pain-related impairment rating, he or she may increase the percent by up to three percent and classify the individual's pain-related impairment into one of four categories: mild, moderate, moderately severe or severe. The Office, however, has stated that a separate pain calculation under Chapter 18 is not be used in combination with other methods to measure impairment due to sensory pain as outlined in Chapters 13, 16 and 17 of the fifth edition of the A.M.A., *Guides*.[9]

In this case, appellant maybe entitled to compensation for pain as evaluated and described in either Chapter 17.21 at pages 550-52 or Chapter 18. Because the Office medical adviser did not address the issue of pain in evaluating appellant's impairment, the Board will remand the case for appropriate development.

The decisions of the Office of Workers' Compensation Programs dated August 29 and May 14, 2001 are hereby set aside and the case is remanded for further development consistent with this opinion.

Dated, Washington, DC
December 4, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] FECA Bulletin No. 01-05.