U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AMANTE V. BLANCADA and U.S. POSTAL SERVICE, POST OFFICE, San Diego, CA

Docket No. 02-527; Submitted on the Record; Issued December 4, 2002

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issue is whether appellant is entitled to more than an eight percent permanent impairment of the right lower extremity and a three percent permanent impairment of the left lower extremity, for which he received a schedule award.

On August 10, 1998 appellant, then a 47-year-old mailhandler, filed an occupational disease claim alleging that on July 29, 1998 he first realized that his severe plantar fasciitis of the right foot was caused or aggravated by factors of his federal employment.

By letter dated August 17, 1999, the Office of Workers' Compensation Programs accepted appellant's claim for right plantar fasciitis and consequential right ankle sprain, and authorized plantar fasciotomy, which was performed in June 1999. The Office paid appropriate wage-loss compensation.

By letter dated January 12, 2000, the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. John Lake, a Board-certified orthopedic surgeon, for a second opinion because the medical evidence of record indicated that appellant had an osteochondral defect of the right ankle and left foot plantar fasciitis, which were not accepted conditions.

In a January 27, 2000 report, Dr. Lake indicated that he had examined appellant on January 27, 2000. He reported a review of appellant's medical records, his findings on physical examination and a diagnosis of bilateral plantar fasciitis and osteochondral defect medial talar dome of the right ankle. He opined that the bilateral plantar fasciitis was not employment related, however, since the right plantar fasciitis was accepted as work related then the plantar fasciitis of the left foot became secondarily related because of appellant's need to protect the right foot, resulting in increased stress on the left foot while nonweight bearing secondary to the surgery was done. Dr. Lake further opined that the osteochondritis of the right ankle was a preexisting condition that was not work related and that appellant may have had an aggravation of the condition, but it had returned to baseline.

On March 10, 2000 appellant filed a claim for a schedule award based on loss of use of his right foot. In support of his claim, appellant submitted a January 18, 2000 report of Dr. Thomas Harris, an orthopedic surgeon and his treating physician, revealing his complaints regarding his right foot and ankle, a history of his employment injury, and a description of his mailhandler position and medical, family and social background. Dr. Harris stated that he reviewed appellant's medical records and noted his findings on physical examination. He opined that appellant had reached a permanent and stationary level for his employment injury. Dr. Harris diagnosed bilateral plantar fasciitis, status post plantar fascia release and right ankle osteochondral defect with osteonecrosis. He concluded that appellant had a 21 percent impairment due to osteochondral defect based on Table 62, page 83 of the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Dr. Harris further concluded that appellant's plantar fasciitis and chronic ankle sprain with permanent aggravation of a preexisting osteochondral defect were a direct result of the July 29, 1998 employment injury. Dr. Harris noted that another way to rate appellant was by his antalgic gait, which constituted a 17 percent impairment due to his plantar fasciitis. In an accompanying work-capacity evaluation, Dr. Harris indicated that appellant could work eight hours a day with certain physical restrictions.

Based on a conflict in the medical opinion evidence between Drs. Lake and Harris, the Office referred appellant to Dr. Sidney Levine, for an impartial medical examination by letter dated February 8, 2001.

Dr. Levine submitted a March 20, 2001 report indicating that he examined appellant on February 22, 2001 and reviewed appellant's medical records and history. He indicated his findings on examination and diagnosed osteochondritis dissecans of the right talus, bilateral plantar fasciitis and status post plantar fascial release performed in June 1999. In response to the Office's questions, Dr. Levine stated that appellant's plantar fasciitis was caused by his work activities and that his osteochondral defect was permanently aggravated by his work activities.

On May 7, 2001 the Office requested that an Office medical adviser determine the extent of permanent functional loss of appellant's lower extremities and the date of maximum medical improvement.

On May 23, 2001 the Office medical adviser indicated a review of Dr. Levine's March 20, 2001 report. Utilizing the fifth edition of the A.M.A., *Guides* the Office medical adviser stated that there was no loss of range of motion. She noted that impairment due to sensory deficit or pain was Grade 4 and 25 percent based on Table 16-10, page 482. She further noted that maximum impairment based on the medial and lateral plantar nerves was 10 percent. The Office medical adviser determined that appellant had a three percent impairment. She further determined that impairment of the right ankle due to arthritis and cartilage loss was five percent based on Table 17-31, page 544. She concluded that appellant had an eight percent impairment of the right lower extremity and a three percent of the left lower extremity. She further concluded that appellant reached maximum medical improvement on March 20, 2001.

In a June 28, 2001 decision, the Office granted appellant a schedule award for an eight percent impairment of the right lower extremity and a three percent permanent impairment of the

left lower extremity. By letter dated July 16, 2001, appellant requested an examination of the written record by an Office representative.

By decision dated November 16, 2001, the hearing representative affirmed the Office's decision based on the Office medical adviser's determination that appellant had an eight percent permanent impairment of the right lower extremity and a three percent permanent impairment of the left lower extremity.

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

The schedule award provisions of the Federal Employees' Compensation Act[1] and its implementing regulation[2] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. 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.

In the present case, Dr. Harris, appellant's treating physician and an orthopedic surgeon, found that appellant has a 21 percent permanent impairment of the lower extremities. The Office medical adviser found that appellant has an eight percent permanent impairment of the right lower extremity and a three percent permanent impairment of the left lower extremity based on Dr. Levine's findings. The Board notes that, although the Office referred appellant to Dr. Levine for an impartial medical examination, the Office did not request that Dr. Levine determine the extent of appellant's impairment of the lower extremities.

The Board finds a conflict in the medical opinion evidence between appellant's treating physician and the Office physician on the extent of permanent impairment of appellant's lower extremities.

Section 8123 of the Act[3] provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician to resolve the conflict.[4]

To resolve the conflict in opinion between Dr. Harris and the Office medical adviser, the Office shall refer appellant together with the case record and a statement of accepted facts, to an

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404 (1999).

[3] 5 U.S.C. §§ 8101-8193 (1974); 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321.

[4] *Shirley L. Steib*, 46 ECAB 309, 316 (1994).

appropriate medical specialist for an impartial medical evaluation to determine the percentages of impairment based on the A.M.A., *Guides*, pursuant to section 8123(a).[5]

The November 16 and June 28, 2001 decisions of the Office Workers' Compensation Programs are hereby set aside and the case is remanded for further consideration consistent with this decision.

Dated, Washington, DC
December 4, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

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[5] 20 C.F.R. § 10.321.