

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTOPHER D. HOWARD and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 01-1209; Submitted on the Record;
Issued January 9, 2002*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a seven percent permanent impairment of the left lower extremity for which he received a schedule award.

On March 9, 1999 appellant, then a 30-year-old mail carrier, filed a notice of traumatic injury alleging that he stepped into a hole and hurt his left ankle in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for a fracture of the left ankle. Appellant came under the care of Dr. Robert Leb, a Board-certified orthopedic surgeon, and underwent open reduction and internal fixation of the left distal fibula on March 19, 1999. He was off work from March 9 until May 5, 1999 when he returned to limited duty. Appellant resumed regular duty on September 14, 1999.

On January 7, 2000 appellant filed a claim for a schedule award.¹

By letter dated January 14, 2000, the Office requested that Dr. Leb examine appellant to determine the extent of any permanent partial impairment he sustained to the left lower extremity. Dr. Leb was directed to submit his findings in accordance with the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

The Office subsequently received a February 2, 2000 report from Dr. Malcom Brahms, a Board-certified orthopedic surgeon, who is in partnership with Dr. Leb. Dr. Brahms noted the results of a physical examination and responded to an Office questionnaire. He indicated that appellant had reached maximum medical improvement, that there was evidence of a decreased subtalar motion, no evidence for ankylosis, and no significant evidence for any muscle atrophy. He further reported that range of motion was 85/120 degrees. He stated, "it appears that he

¹ On January 15, 2000 appellant filed a notice of traumatic injury alleging that he stepped into a hole covered by snow and sustained a new injury to his left ankle. The Office approved medical treatment for the accepted claim of a left ankle sprain. The Office combined appellant's claims under case file number A9450970.

qualifies for a mild degree of motion of the ankle estimated to be [five percent] taken for his body as a whole.” Dr. Brahms also stated that appellant had limited motion of the dorsiflexion, which he estimated was 10 percent whole body impairment.

On February 9, 2000 the Office referred the case record, including Dr. Brahms’ report, to an Office medical adviser for review and calculation of the schedule award. In a report dated February 15, 2000, the Office medical adviser opined that appellant had reached maximum medical improvement and that he had seven percent permanent impairment for mild limitation of range of motion of the left ankle under Table 42, page 78 of the A.M.A., *Guides*.

In a decision dated February 29, 2000, the Office issued a schedule award for seven percent permanent impairment of the left lower extremity. The period of the award was from May 18 to October 16, 1999.

Appellant next requested a hearing, which was held on October 24, 2000. Appellant appeared with counsel and questioned why he had been examined by Dr. Brahms and not Dr. Leb, his treating physician. Appellant, however, did not submit any evidence to show that Dr. Brahms’ examination was improper, nor did he submit any evidence to show that he was entitled to a greater schedule award.

In a decision dated January 31, 2001, an Office hearing representative affirmed the Office’s February 29, 2000 decision issuing appellant a seven percent schedule award for permanent impairment of the left lower extremity.

The Board finds that appellant is not entitled to more than a seven percent permanent impairment of the left lower extremity, for which he received a schedule award.

The schedule award provision of the Federal Employees’ Compensation Act (FECA)² and its implementing federal regulation,³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, 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.⁴ 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.⁵

The A.M.A., *Guides* were prepared to establish reference tables and evaluation protocols which, if followed, may allow the clinical findings of the physician to be compared directly with

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ 5 U.S.C. § 8107(c)(19).

⁵ See 20 C.F.R. § 10.404 (1999).

the impairment criteria and related to impairment percentages. While the medical opinion of the treating physician may be accorded some weight, his or her clinical data can be readily extrapolated and evaluated within the tables and guidelines presented.⁶

In this case, the Office medical adviser properly applied the physical findings of Dr. Brahms⁷ to the A.M.A., *Guides* and cited the appropriate table and page reference for concluding that appellant had seven percent permanent impairment of the left lower extremity due to loss of range of motion. Because Dr. Brahms did not explain his impairment rating with reference to the uniform standards set forth in the Office regulations, it was proper for an Office medical adviser to apply the A.M.A., *Guides* to the findings reported by Dr. Brahms on examination.⁸ The Office medical adviser's report provides the only evaluation that conforms to the A.M.A., *Guides* and thus constitutes the weight of the medical evidence.⁹

The January 31, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 9, 2002

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ *Michael D. Nielsen*, 49 ECAB 453 (1998).

⁷ The Board agrees with the Office hearing representative that appellant did not show any reason why Dr. Brahms' examination report was not reliable, particularly since he was in partnership with appellant's treating physician. Furthermore, although Dr. Brahms cited appellant's impairment in terms of the whole man, a schedule award is not payable under the Act for an impairment of the whole person. *Rozella L. Skinner*, 37 ECAB 398 (1986).

⁸ *Lena P. Huntley*, 46 ECAB 643 (1995); *Roel Santos*, 41 ECAB 1001 (1990).

⁹ *Lena P. Huntley*, *supra* note 8.