

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEARL L. FIELDS and U.S. POSTAL SERVICE,
POST OFFICE, Royal Oak, MI

*Docket No. 01-1957; Submitted on the Record;
Issued July 25, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has a permanent impairment to her lower extremities, entitling her to a schedule award under section 8107 of the Federal Employees' Compensation Act.

The Office of Workers' Compensation Programs accepted that appellant, then a 37-year-old casual letter carrier, sustained bilateral ankle strains and tendinitis due to a work-related incident which occurred on April 21, 1997. All appropriate benefits were paid.

Appellant later filed a claim for a schedule award for permanent impairment.

In a report dated January 11, 2000, Dr. Thomas Lee, an orthopedic surgeon and appellant's treating physician, stated that appellant has maintained continued pain in both ankles with the left ankle being worse than the right. No evidence of ankle instability was noted and no mechanical derangement was appreciable. Dr. Lee opined that appellant may have medically plateaued, but noted that he was concerned about some elements of nerve damage. Bilateral ankle braces were recommended.

Since Dr. Lee did not do impairment ratings, he referred appellant to his associate, Dr. David M. Vaziri, an orthopedic surgeon. In a report dated January 26, 2000, he noted appellant's history of injury along with the progression of her medical treatment with Dr. Timothy Duffey and Dr. Lee in addition to a recent examination with Novacare. The physical examination revealed the following:

“Inspection of the right ankle showed no overlying edema, erythema, or ecchymosis. No effusion was noted. Mild tenderness to palpation along the posterior tibial tendon was noted. Strength in the posterior tibial tendon was intact with negative provocative tests. Heel alignment was satisfactory as viewed from the rear as well as with standing on the forefoot. No tenderness to palpation

along the peroneal tendons or Achilles tendons was noted. Ankle range of motion was full. Plantar flexion was to 30 degrees, dorsiflexion to 15 degrees. Ankle inversion was 20 degrees, eversion 10 degrees and obviously no ankle ankylosis. Hindfoot was in normal position with no varus or valgus. Negative Tinel's over the tarsal tunnel was noted. Motor strength of the right ankle was full without limitation, discomfort or atrophy. Pedal pulses were intact on the right. Sensation was intact to pinprick on the right. Tenderness to palpation was noted over the anterior talofibular ligament.

“Inspection of the left ankle revealed no overlying edema, erythema, or ecchymosis. No effusion was noted. Tenderness to palpation was over the posterior tibial tendon as well as lateral ligamentous complex, namely anterior talofibular ligament site. Ankle range of motion was 30 degrees previous plantar flexion, 20 degrees of dorsiflexion, 20 degrees inversion, 10 degrees of eversion. No hindfoot or varus or valgus abnormalities were noted. No pain with inversion/eversion of the ankle was noted bilaterally. Motor strength to the left ankle was intact 5/5 without any discomfort, limitation or noted atrophy. Negative Tinel's over the tarsal tunnel. Pedal pulse was intact. Sensation was intact to pinprick to the left foot. No evidence of any ankle instability or positive subtalar drawer sign bilaterally.”

The January 29, 1999 radiographs of the foot and ankle showed no evidence of fracture dislocation, subluxation or arthritis.

Based on the fourth edition of the American Medical Association (A.M.A.), *Guide for Evaluation of Permanent Impairment*, Dr. Vaziri opined that there was no permanent impairment. Appellant had no objective findings of decreased strength, no muscle atrophy, no change in sensation, nor any lost motion of the ankles. Although appellant had subjective complaints and areas of tenderness, Dr. Vaziri opined that these did not qualify for a permanent impairment rating based on the A.M.A., *Guides*. It was noted that appellant has intermittent use of ankle supports which are worn inside the shoes. Dr. Vaziri further opined that based on the intensive care appellant has had with several orthopedists, including Dr. Lee, a foot and ankle specialist, she has reached a medical plateau as of January 26, 2000. He noted that Dr. Lee felt appellant had reached maximum medical improvement as of January 11, 2000. As such, Dr. Vaziri opined that he would concur with Dr. Lee that appellant has reached maximum medical improvement as of January 26, 2000.

In a letter dated May 31, 2000, an Office medical adviser concurred with Dr. Vaziri's assessments in his report of January 26, 2000, wherein no permanent impairment was noted. Accordingly, the Office medical adviser stated that there was a zero percentage permanent impairment rating for both lower extremities.

By decision dated July 28, 2000, the Office denied appellant's claim for a schedule award on the grounds that the evidence did not establish that she had a ratable impairment to her lower extremities. The Office accorded determinative weight to Dr. Vaziri because in his medical report, he correctly applied the A.M.A., *Guides* to the findings on examination, provided an explanation for computations and concluded that appellant did not have any impairment to her

lower extremities. The Office additionally noted that appellant remained entitled to medical benefits for the effects of her injury.

By decision dated March 15, 2001, an Office hearing representative affirmed the July 28, 2000 decision.

The Board finds that appellant has established that she has a permanent impairment of her lower extremities such that she would be entitled to a schedule award under section 8107 of the Act.

An employee seeking compensation under the Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,² including that she sustained an injury in the performance of duty as alleged and that his disability if any, was causally related to the employment injury.³

Under section 8107 of the Act⁴ and section 10.404 of the implementing regulations,⁵ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the A.M.A., *Guides*⁶ as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁷

Appellant must submit sufficient medical evidence to show a permanent impairment causally related to employment that is ratable under the A.M.A., *Guides*. The Office's procedures discuss the type of evidence required to support a schedule award. The evidence must show that the impairment has reached a permanent and fixed state and indicate the date this

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (2000).

⁶ A.M.A., *Guides* (5th ed. 2000).

⁷ *James R. Bradford*, 48 ECAB 320, 324 (1997); *Henry G. Flores, Jr.*, 43 ECAB 901 (1992). The Board notes that the Office based its March 15, 2001 decision on the fourth edition of the A.M.A., *Guides*. However, under FECA Bulletin 01-5 (issued January 29, 2001), any new schedule award decision issued after February 1, 2001 must be based on the fifth edition of the A.M.A., *Guides*. A comparison of the fourth and fifth edition of the A.M.A., *Guides* shows that the section for calculating schedule awards for the relevant lower extremity impairments of this case remains unchanged. Therefore, it was harmless error for the Office to use the fourth edition.

occurred, describe the impairment in detail and contain an evaluation of the impairment under the A.M.A., *Guides*.⁸

In the present case, the evidence establishes that appellant sustained a permanent impairment causally related to the employment injury.

The Board notes that Dr. Vaziri, appellant's treating physician for purposes of attaining an impairment rating, properly applied to the A.M.A., *Guides*, to find that appellant had objective evidence of a permanent impairment. Dr. Vaziri presented his physical findings for both the left and right ankle which, as noted in his report, revealed no objective findings of decreased strength, no muscle atrophy and no change in sensation. In his medical report of January 26, 2000, Dr. Vaziri presented the following range of motion findings for the right ankle: plantar flexion of 30 degrees equated to a zero impairment;⁹ dorsiflexion (extension) of 15 degrees equated to a zero impairment;¹⁰ ankle inversion of 20 degrees equated to a 2 percent lower extremity impairment;¹¹ eversion of 10 degrees equated to a 2 percent lower extremity impairment.¹² Range of motion findings for the left ankle, as noted from Dr. Vaziri's report result in the following: plantar flexion of 30 degrees equated to a 0 impairment;¹³ 20 degrees of dorsiflexion equated to a 0 impairment;¹⁴ 20 degrees inversion equated to 2 percent lower extremity impairment;¹⁵ and 10 degrees of inversion equated to 2 percent lower extremity impairment.¹⁶ Under the A.M.A., *Guides*, Dr. Vaziri's findings indicate a four percent lower extremity impairment for range of motion in both the right and left legs. No hindfoot or varus or valgus abnormalities were noted in either of appellant's ankles, which equated to a zero percent impairment.¹⁷ Dr. Vaziri additionally noted that, although appellant had subjective complaints of pain and areas of tenderness, he opined this was not ratable under the A.M.A., *Guides*.¹⁸ Since he opined that appellant's pain-related impairment was not ratable, this equated to a zero

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (March 1995).

⁹ A.M.A., *Guides*, Table 42, p. 3/78 (4th ed. 1993); A.M.A., *Guides*, Table 17-11, p. 537 (5th ed. 2000).

¹⁰ *Id.*

¹¹ A.M.A., *Guides*, Table 43, p. 3/78 (4th ed. 1993); A.M.A., *Guides*, Table 17-12, p. 537 (5th ed. 2000).

¹² *Id.*

¹³ *See supra* note 9.

¹⁴ *Id.*

¹⁵ *See supra* note 11.

¹⁶ *Id.*

¹⁷ A.M.A., *Guides*, Table 44, p. 3/78 (4th ed. 1993); A.M.A., *Guides*, Table 17-13, p. 537 (5th ed. 2000).

¹⁸ A.M.A., *Guides*, Chapter 18, section 18.3d, p. 573 (5th ed. 2000).

percent impairment.¹⁹ The Board will remand the case for further development in conformance with this decision.

The March 15, 2001 and July 28, 2000 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case remanded for further development of appellant's bilateral lower extremity impairment.

Dated, Washington, DC
July 25, 2002

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁹ *Id.* at § 18.3d(E).