

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STANLEY B. KLITENIC and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, MD

*Docket No. 02-216; Submitted on the Record;
Issued June 5, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a 20 percent permanent impairment to his left leg.

The Office of Workers' Compensation Programs accepted that appellant sustained left ankle sprains in the performance of duty on January 3, 1985 and June 26, 1993. By decision dated March 20, 1989, the Office issued a schedule award for a 15 percent permanent impairment to the left leg. In a decision dated July 14, 1998, the Office issued a schedule award for an additional five percent impairment to the left leg.

By decision dated October 26, 1998, an Office hearing representative remanded the case for further development. In a decision dated June 2, 1999, the Office determined that appellant was not entitled to an additional schedule award beyond the 20 percent previously awarded. By decision dated November 4, 1999, an Office remanded the case for further development.

In a decision dated July 19, 2000, the Office determined that appellant was not entitled to an additional schedule award. In a decision dated April 5, 2001, an Office hearing representative affirmed the prior decision. By decision dated September 20, 2001, the Office denied modification.

The Board finds that appellant has not established an employment-related permanent impairment to the left leg greater than the 20 percent previously awarded.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² 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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

There has been significant development of the medical evidence with respect to a permanent impairment to appellant's left leg. In a report dated March 7, 2000, Dr. Avigdor Niv, an orthopedic surgeon selected as a second opinion referral physician, opined that appellant had a 31 percent permanent impairment to the left leg. An Office medical adviser, however, noted in a April 6, 2000 report, that Dr. Niv had included an 11 percent impairment due to calf atrophy, and this impairment was the result of a hip replacement, not the employment injuries. The medical adviser also found that there was no impairment for loss of range of motion for ankle extension and flexion under Table 42.³

The Office found a conflict in the medical evidence and referred the case to Dr. Edward R. Cohen, a Board-certified orthopedic surgeon. The Board notes that a conflict under section 8123(a) of the Act exists when there is a disagreement between a physician for the Office and an attending physician.⁴ The referral to Dr. Cohen is therefore as a second opinion referral physician.⁵

In a report dated May 17, 2000, Dr. Cohen provided a history and results on examination. He noted some scarring within the anterior talofibular ligament consistent with an ankle sprain; he also noted that other findings such as weakness in the tibialis posterior tendon, plano valgus deformity of the foot, and minor degenerative changes, could not be attributed to the employment injuries. Dr. Cohen reported that arthroscopic surgery had allowed appellant to maintain normal motion of the ankle, and he concluded that appellant had no more than a 15 percent permanent impairment. He completed a form report (CA-1303) indicating 20 degrees of dorsiflexion, 40 degrees of plantar flexion, 30 degrees inversion and 20 degrees eversion for the ankle. Dr. Cohen concluded that appellant had a 15 percent impairment for pain or weakness.

In a report dated July 5, 2000, an Office medical adviser properly noted that, under Tables 42 and 43, there was no ratable impairment for loss of ankle motion.⁶ The medical adviser found a 15 percent impairment due to pain, citing the discussion of pain impairments in the A.M.A., *Guides*.⁷

³ A.M.A., *Guides* (4th ed. 1993) 78, Table 42.

⁴ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

⁵ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

⁶ A.M.A., *Guides*, 78, Tables 42 and 43.

⁷ *Id.* at 303-14.

The Board finds no probative evidence establishing more than a 20 percent permanent impairment to the left leg under the A.M.A., *Guides*. Appellant submitted a November 6, 2000 report, with a January 4, 2001 addendum, from Dr. Mark Myerson, an orthopedic surgeon, who opined that due to limitation of function and motion of the subtalar joints appellant had a 54 percent impairment of the foot and ankle. He also opined that appellant had an additional 15 percent impairment to the leg due to pain, weakness and venous stasis. Dr. Myerson did not provide specific range of motion results for the ankle, or explain how specific tables in the A.M.A., *Guides* were applied. Accordingly, the Board finds his reports were of limited probative value.

By letter dated June 19, 2001, appellant requested reconsideration of his claim and submitted a report dated June 15, 2001 from Dr. Myerson. As of February 1, 2001, any recalculation of a previous schedule award is based on the (fifth edition 2001) of the A.M.A., *Guides*.⁸ Dr. Myerson reported that appellant had 10 degrees of dorsiflexion and 23 degrees of plantar flexion in the ankle. In a report dated September 20, 2001, an Office medical adviser noted that, under the fifth edition, this would result in a 7 percent leg impairment for loss of extension, with no impairment for plantar flexion.⁹ Dr. Myerson also reports ankylosis of the subtalar joint,¹⁰ but then appears to indicate that there was five degrees of motion in the joint. He reported a 5 percent impairment under Table 43 of the fourth edition (now Table 17-12 of the fifth edition), without clearly describing the findings and explaining how the table was applied. Dr. Myerson also opined that venous stasis, weakness and pain were causally related to the employment injuries, but he does not refer to any specific tables or discussions in the A.M.A., *Guides*, or otherwise provide a detailed description of the impairment that would provide a basis for a rating under the fifth edition.¹¹ To support a schedule award, the attending physician must include a detailed description of the impairment.¹²

The Board accordingly finds that the probative medical evidence of record does not establish more than the 20 percent permanent impairment to the left leg previously awarded to appellant.

⁸ FECA Bulletin 01-05 (January 29, 2001).

⁹ A.M.A., *Guides* (5th ed. 2001), 537, Table 17-11.

¹⁰ Ankylosis is the complete absence of joint motion and is expressed as a fixed position. *See id.* at 402.

¹¹ With respect to pain the fifth edition provides a detailed protocol for assessing pain-related impairments. *Id.* at 565-89.

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (March 1995).

The decisions of the Office of Workers' Compensation Programs dated September 20 and April 5, 2001 are affirmed.

Dated, Washington, DC
June 5, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member