

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY F. CAUDILLO and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Kansas City, MO

*Docket No. 02-982; Submitted on the Record;
Issued November 12, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On February 2, 1998 appellant, then a 50-year-old control clerk, sustained employment-related bilateral knee contusions, right wrist sprain and fractures to the right radial head and right ankle when she fell at work. On September 14, 1999 she underwent ligament reconstruction on the right ankle. On October 18, 2000 she filed a claim for a schedule award. By decision dated November 26, 2001, the Office of Workers' Compensation Programs granted appellant a schedule award for a seven percent permanent impairment of the right lower extremity, for a total of 20.16 weeks of compensation, to run from February 10 to June 30, 2000. The instant appeal follows.¹

The Board finds that appellant failed to establish that she has more than a seven percent impairment of the right lower extremity.

Under section 8107 of the Federal Employees' Compensation Act² and section 10.404 of the implementing federal regulations,³ 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 under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to

¹ By decision dated January 14, 2002, the Office granted appellant a schedule award for a four percent permanent impairment of the right upper extremity, for a total of 12.48 weeks of compensation, to run from June 18 to September 13, 1998. Appellant has not filed an appeal with the Board in regard to the January 14, 2002 decision.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) has been adopted by the Office,⁴ and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁵

The relevant medical evidence in the instant case includes an August 27, 2001 report in which Dr. Jennifer Finley, who is Board-certified in physical medicine and rehabilitation, advised that appellant had reached maximum medical improvement regarding her ankle condition on February 10, 2000. She further stated that she had evaluated appellant in accordance with the fifth edition of the A.M.A., *Guides*, and provided measurements for appellant's range of motion which indicated that appellant's ankle dorsiflexion lacked 15 degrees of neutral and plantar flexion was 40 degrees. Dr. Finley then utilized Table 17-11 of the A.M.A., *Guides* and determined that appellant had a seven percent impairment of the right lower extremity. In a supplementary report dated October 24, 2001, Dr. Finley advised that appellant's ankle inversion measured 21 degrees and eversion measured 15 degrees, which were normal under the A.M.A., *Guides*. By report dated November 2, 2001, an Office medical adviser reviewed Dr. Finley's reports and accepted her findings concerning the right ankle.

In this case, the Board finds that Dr. Finley, as supported by the Office medical adviser, properly determined that appellant had a seven percent impairment of the right lower extremity. Section 17.2f of the A.M.A., *Guides* provides that lower extremity impairment can be evaluated by assessing the range of motion of the joint.⁶ Table 17-11 provides the method for assessing ankle motion impairments,⁷ and Dr. Finley properly found that appellant's measurement of 40 degrees for plantar flexion did not indicate an impairment but that her lack of 15 degrees of neutral for flexion contracture provided the basis for a 7 percent impairment of the right lower extremity. Lastly, Dr. Finley properly evaluated appellant's ankle inversion and eversion under Table 17-12⁸ and found that these measurements of 21 and 15 degrees respectively did not entitle appellant to an additional impairment rating. Appellant, therefore, failed to establish that she is entitled to more than the seven percent impairment of the right lower extremity, for which she received a schedule award.⁹

⁴ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁵ See *Joseph Lawrence, Jr.*, *supra* note 4; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ A.M.A., *Guides* at 533.

⁷ A.M.A., *Guides* at 537.

⁸ *Id.*

⁹ The Board further notes that on appeal appellant contends that she may require further ankle surgery. A claimant may seek an increased schedule award if the evidence establishes that progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

The decision of the Office of Workers' Compensation Programs dated November 26, 2001 is hereby affirmed.

Dated, Washington, DC
November 12, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member