

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE L. DORTY and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 03-92; Submitted on the Record;
Issued April 10, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant is entitled to more than a 22 percent impairment of his right lower extremity, for which he received a schedule award.

On March 11, 1993 appellant, then a 45-year-old letter carrier, filed a notice of traumatic injury alleging that on that day he sprained an ankle while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim on March 30, 1993 for right ankle sprain.

In a report dated March 8, 1996, Dr. Edmund C. Landry, a Board-certified orthopedic surgeon, stated that appellant was postsurgery for a right ankle fracture and that he had post-traumatic osteoarthritis and abnormal gait as a result of the fracture. In a report dated April 11, 1996, an Office medical adviser determined that appellant had an 18 percent right lower extremity impairment based on "antalgic limp with shortened stance phase and documented moderate arthritic change of the knee."¹

On April 26, 1996 the Office awarded appellant an 18 percent disability for the right lower extremity.

Appellant returned to full duty in December 1996.

On April 19, 2002 appellant submitted a claim for a recurrence of disability alleged to have occurred on December 21, 2001.² The Office accepted the recurrence of disability on May 2, 2002.

¹ The Office medical adviser noted that he relied on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Table 36 at 76 (4th ed. 1993) to support his rating.

² Appellant incorrectly noted December 21, 2002.

In a report dated June 20, 2002, Dr. Windsor S. Dennis, appellant's treating physician and an orthopedic surgeon, stated that appellant had an antalgic limp and arthritic change in the ankle, which required use of a short leg brace. These conditions rated 7 percent and 15 percent whole person impairments and that the loss of range of motion of the right ankle rated a 3 percent whole person impairment, a 7 percent lower extremity impairment and a 10 percent foot impairment. Dr. Dennis also noted, based on diagnosis-based estimates, that appellant had an 8 percent whole person impairment, a 20 percent lower extremity impairment and a 10 percent foot impairment. He also noted nerve loss, which resulted in a two percent lower extremity impairment and a five percent foot impairment. The physician found a right lower extremity impairment of 29 percent and a 43 percent impairment rating of the foot.³

In a report dated September 11, 2002, an Office medical adviser determined that appellant had a 22 percent right lower extremity impairment, noting that "This is an additional 4 percent impairment."

In a decision dated September 26, 2002, the Office awarded appellant an additional 4 percent disability for a total schedule award of 22 percent for the right lower extremity.

The Board finds that appellant has not established an impairment of more than 22 percent of the right lower extremity, for which he received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulation⁵ 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.⁶

In this case, appellant's treating physician used the A.M.A., *Guides* (5th ed. 2001) to rate his right lower extremity by combining range of motion findings and diagnostic-based estimates along with nerve loss findings to arrive at a 29 percent impairment rating.⁷ However, the A.M.A., *Guides* do not permit combining diagnostic-based estimates and range of motion findings in evaluating a single impairment.⁸ On the other hand the Office medical adviser properly relied on the data from the treating physician and the A.M.A., *Guides* (5th ed. 2001) to

³ Dr. Dennis noted that he relied on the A.M.A., *Guides* (5th ed. 2001), which became effective February 1, 2001.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404 (1999).

⁶ *Id.*

⁷ Dr. Dennis also noted whole person impairment rating; however, a whole person impairment rating is not covered under the Act, 5 U.S.C. § 8107(c).

⁸ A.M.A., *Guides*, Table 17-2 at 526 (5th ed. 2001).

determine appellant's impairment rating of the right lower extremity. He noted Dr. Dennis' diagnostic-based estimate of the right ankle fracture of 20 percent⁹ and nerve deficit findings of 2 percent,¹⁰ which resulted in a 22 percent right lower extremity impairment. There is no medical evidence of record that appellant has more than a 22 percent impairment of the right lower extremity, for which he has received a schedule award.¹¹

The September 26, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.¹²

Dated, Washington, DC
April 10, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁹ *Id.* at 546, Table 17-33.

¹⁰ *Id.* at 552, Table 17-37.

¹¹ In his appeal, appellant stated that Dr. Dennis recommended an impairment rating of 43 percent. However, that rating was for appellant's foot, a condition that the Office did not accept.

¹² The Board notes that this case record contains evidence, which was submitted subsequent to the Office's September 26, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).