

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TAMARA G. BOWENS and U.S. POSTAL SERVICE,
MOUNT GREENWOOD STATION, Chicago, IL

*Docket No. 03-287; Submitted on the Record;
Issued April 11, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than an eight percent impairment of the left lower extremity and an eight percent impairment of the right lower extremity, for which she received a schedule award.

On March 2, 1998 appellant, then a 32-year-old carrier technician, filed an occupational disease claim, alleging that factors of employment caused foot and heel pain and plantar fasciitis. By letter dated May 26, 1998, the Office of Workers' Compensation Programs accepted that appellant sustained employment-related chronic bilateral plantar fasciitis. On February 14, 2002 appellant filed a schedule award claim, and in a letter dated February 26, 2002, the Office requested that appellant's treating podiatrist, Dr. Michelle R. Heiring, evaluate appellant's lower extremity impairment under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Dr. Domic A. Andriacchi, an associate of Dr. Heiring, submitted a report and evaluation forms dated March 26, 2002. Dr. Heiring also submitted an undated report. In a report dated May 3, 2002, an Office medical adviser reviewed these reports.

By decision dated June 3, 2002, appellant was granted a schedule award for an eight percent permanent impairment of the right lower extremity and an eight percent permanent impairment of the left lower extremity, for a total of 32.80 weeks of compensation, to run from March 26 to November 10, 2002. In a letter dated June 20, 2002, appellant requested a review of the written record, and in a decision dated September 9, 2002, an Office hearing representative affirmed the prior decision. The instant appeal follows.¹

The Board finds that appellant has greater than an eight percent impairment of the left lower extremity and greater than an eight percent impairment of the right lower extremity.

¹ The Board notes that, on November 1, 2002, the date appellant filed her appeal with the Board, she also requested reconsideration with the Office. The Board and the Office, however, may not have concurrent jurisdiction over the same issue in the same case; *see Douglas E. Billings*, 41 ECAB 880 (1990).

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulation³ 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. The Act, however, 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*⁴ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

The relevant medical evidence includes an Office form report dated March 26, 2002 in which Dr. Andriacchi provided specific findings regarding appellant's lower extremities, advising that appellant had 50 percent loss of function due to pain, discomfort and sensory alteration, a 50 percent loss of function due to limitations of motion and/or ankylosis of a particular joint or joints and a 30 percent loss of function due to muscle weakness or atrophy. He further advised that appellant had a nonspecific loss of function due to causalgia and provided range-of-motion measurements which indicated that appellant had a 20 degree range of motion of both great toes at the interphalangeal joint and decreased strength and range of motion for dorsiflexion of 35 degrees and 20 degrees in the great toes. Regarding toes two through five, the doctor indicated that range of motion was decreased. He stated that appellant had bilateral muscle atrophy and an increase in arthritis. He did not provide a date of maximum medical improvement. Drs. Andriacchi and Heiring also submitted medical narrative reports that described appellant's diagnoses and treatment.

In a report dated May 3, 2002, an Office medical adviser reviewed the medical evidence and, utilizing the fifth edition of the A.M.A., *Guides*, determined the permanent partial impairment of appellant's right and left lower extremities due to the employment-related bilateral plantar fasciitis. He advised that, after reviewing the reports of Drs. Andriacchi and Heiring, including Dr. Andriacchi's March 26, 2002 report, while Dr. Andriacchi performed an impairment evaluation, he made no recommendation regarding permanent impairment. The Office medical adviser then concluded that maximum medical improvement had been reached on March 26, 2002, the date of Dr. Andriacchi's report and that appellant was entitled to a Grade 2 sensory deficit/pain impairment in the distribution of the medial and lateral plantar nerves which equaled an 80 percent sensory deficit under Table 16-10 of the A.M.A., *Guides*. He then found that, under Table 17-37, the maximum lower extremity impairment due to pain/dysesthesias in the distribution of each nerve is five percent, which equaled an eight percent permanent impairment for each lower extremity.

The Board finds that, while Dr. Andriacchi provided impairment findings regarding appellant's lower extremities, he provided no analysis under the A.M.A., *Guides*. The Office

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.404 (1999).

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 *Ronald R. Kraynak*, 53 ECAB ____ (Docket No. 00-1541, issued October 2, 2001).

medical adviser, however, utilized the findings provided by Dr. Andriacchi and applied these to the proper tables of the A.M.A., *Guides*. As instructed under section 17.21 of the A.M.A., *Guides*,⁶ the Office medical adviser first identified the medial and lateral plantar nerves under Table 17-37,⁷ and then rated the impairment under Table 16-10, awarding appellant the maximum found under Grade 2 of Table 16-10,⁸ or an 80 percent impairment. He then returned to Table 17-37, noted that the maximum allowed for pain and dysesthesias in the distribution of each nerve was 5 percent, for a total of 10 percent for each lower extremity. He then properly multiplied the 10 percent by 80 percent, finding that appellant was entitled to an 8 percent impairment for each lower extremity.

The Board, however, finds that the Office erred in computing the number of weeks to which appellant was entitled for a lower extremity impairment. The Office awarded appellant 32.80 weeks of compensation, or 16.40 weeks for each lower extremity. Section 8107(c)(2) provides that 288 weeks of compensation is to be paid for 100 percent loss of use of a leg.⁹ Eight percent of 288 weeks is 23.04 weeks, rather than the 16.40 weeks awarded.¹⁰ The Board therefore concludes that appellant is entitled to additional compensation.

⁶ A.M.A., *Guides*, *supra* note 4 at 550.

⁷ *Id.* at 552.

⁸ *Id.* at 482. The Board notes that section 17.21 of the A.M.A., *Guides* provides that Table 16-10 is applicable to both the upper and lower extremities. *Id.* at 550.

⁹ 5 U.S.C. § 8107(c)(2).

¹⁰ It appears that the Office based its award on 5 U.S.C. § 8107(c)(4), which provides that a maximum award of 205 weeks is to be granted for a total impairment of the foot. The Office medical adviser's findings, however, clearly indicate that his analysis was for the lower extremity, as provided in Table 17-37.

The decisions of the Office of Workers' Compensation Programs dated September 29 and June 3, 2002 are hereby affirmed as modified. The case is remanded to the Office for proceedings consistent with this opinion of the Board.

Dated, Washington, DC
April 11, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member