

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CANDICE P. KENNARD and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, CA

*Docket No. 02-2359; Submitted on the Record;
Issued January 24, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a 17 percent permanent impairment of her left lower extremity for which she received a schedule award.

Appellant, a 25-year-old mailhandler, filed a claim for compensation on June 1, 1972 alleging that she injured her back lifting, in the performance of duty. The Office of Workers' Compensation Programs accepted her claim for lumbosacral strain and herniated disc at L4-5 on July 12, 1972. Appellant returned to work at the employing establishment on February 11, 1983 as a distribution clerk.

Appellant requested a schedule award in 1996. By decision dated December 17, 1997, the Office granted her a schedule award for 12 percent permanent impairment of her left lower extremity and found that she had no permanent impairment of her right lower extremity.

Appellant requested an additional schedule award on March 12, 2001. Her attending physician, Dr. Duc T. Ngo, a physician Board-certified in physical medicine and rehabilitation, indicated on May 10, 1999 that appellant had reached maximum medical improvement following an exacerbation of her back condition. In reports dated August 20 and September 10, 2001, Dr. Ngo reported appellant's back findings relative to her lower extremities for schedule award purposes. The Office medical adviser reviewed appellant's physical findings on December 17, 2001 and found that she had a 17 percent permanent impairment of her left lower extremity and an additional 5 percent impairment above her prior schedule award. By decision dated April 4, 2002, the Office granted appellant a schedule award for an additional 5 percent impairment of the right leg for a total of 17 percent impairment of her right lower extremity.¹

¹ The Board notes that the Office made a typographical error in issuing the schedule award and that the award is properly attributable to appellant's left lower extremity for which she had previously received a schedule award of 12 percent.

The Board finds that appellant has no more than a 17 percent permanent impairment of her left lower extremity for which she is entitled to a schedule award.

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. 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.

In this case, the Office previously granted appellant a schedule award for 12 percent permanent impairment of her left lower extremity due to the 1972 employment-related back injury. Her attending physician, Dr. Ngo, noted her history of injury in his August 20, 2001 report and reported his findings on physical examination including appellant's antalgic gait, use of a cane and mild foot drop on the left. He also reported that appellant's sensation was impaired to light touch and pin prick over the L5 dermatomes and diagnosed left L5 radiculopathy. In a supplemental form report dated September 10, 2001, Dr. Ngo stated that appellant reached maximum medical improvement on July 10, 2001 and that she experienced moderate pain from her left L5 nerve root. He also reported that appellant had weakness in her left big toe extension of four out of five and weakness in her left ankle dorsiflexion of four out of five.

The Office medical adviser reviewed these reports on December 17, 2001 and applied the fifth edition of the A.M.A., *Guides*. He noted that moderate pain was an 80 percent impairment of the L5 nerve root or 4 percent impairment of the left lower extremity.⁴ The Office medical director further found that appellant had 14 percent impairment of her left lower extremity due to weakness based on 12 percent impairment due to Grade 4 impairment due to muscle weakness of the ankle dorsiflexion and 2 percent impairment due to Grade 4 great toe extension.⁵ He combined these figures to reach appellant's impairment rating of 17 percent of the left lower extremity.

There is no medical evidence in the record establishing that appellant has more than a 17 percent impairment of her left lower extremity and no medical evidence addressing any impairment of appellant's right lower extremity. Therefore, the Board finds that appellant has no more than a 17 percent impairment of her left lower extremity.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ A.M.A., *Guides*, 424, Table 15-15; Table 15-18.

⁵ A.M.A., *Guides*, 532, Table 17-8.

The April 4, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 24, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member