

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY L. JACKSON and U.S. POSTAL SERVICE,
POST OFFICE, Lakewood, OH

*Docket No. 03-210; Submitted on the Record;
Issued June 26, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a 17 percent impairment for the right lower extremity and a 16 percent impairment for the left lower extremity for which he has received schedule awards.

On June 21, 1988 appellant, then a 37-year-old letter carrier, filed a claim for occupational disease alleging that his plantar fasciitis was caused by factors of his federal employment and that he was first aware of his condition in March 1987. On September 30, 1988 the Office of Workers' Compensation Programs accepted appellant's claim for aggravation of bilateral calcaneovalgus foot, claim number 09-322772.

On February 3, 1992 appellant filed a claim for a traumatic injury, stating that on that day he injured his lower back and hip while in the performance of duty. On March 3, 1992 the Office accepted appellant's February 3, 1992 claim for lumbosacral strain, claim number A9-362993. The Office subsequently enlarged his claim to include a herniated disc.

On August 23, 1999 appellant filed a claim for a schedule award for his foot condition.

On January 26, 2000 the Office requested appellant's treating physician, Dr. Kathy J. Siesel, a podiatrist, to assess appellant's impairment based on his bilateral calcaneovalgus foot condition. The Office requested that Dr. Siesel rely on the (4th ed. 1993) American Medical Association, *Guides to the Evaluation of Permanent Impairment*, in her assessment.

In a report dated February 29, 2000, Dr. Siesel stated that appellant had a 10 percent impairment of the lower extremity and a 14 percent impairment of the feet.

In a report dated March 17, 2000, an Office medical adviser reviewed Dr. Siesel's report and, relying on Table 44¹ of the A.M.A., *Guides*, determined that appellant had a 12 percent

¹ American Medical Association, *Guides* (4th ed. 1993) 78, Table 44.

impairment of the right foot and a 12 percent impairment of the left foot based on bilateral calcaneovalgus with mild limitation of ankle extension. He also found a zero percent impairment for loss of extension of both feet based on Table 42.² Dr. Siesel noted that appellant had reached maximum medical improvement on December 27, 1999.

In a report dated May 11, 2000, Dr. Siesel stated that appellant had reached maximum medical improvement. She also noted that appellant's quantitative sensory testing of the feet revealed bilateral sensory abnormality "that is consistent with bilateral tarsal tunnel syndrome, an L4-5 disc injury or a nerve root injury to L4, L5 or S1."

By decision dated May 30, 2000, the Office awarded appellant a 12 percent impairment of the right foot and a 12 percent impairment of the left foot under claim number 09-322772. The period of the awards ran from December 27, 1999 to April 23, 2001.

On April 4, 2001 the Office received appellant's claim for an increased schedule award.

In a report dated May 2, 2001, Dr. Dean W. Erickson, Board-certified in internal medicine and in preventive medicine, stated that appellant had a 22 percent impairment of the lower extremities. He stated that appellant's "condition has, for all practical purposes, reached maximum medical improvement in that it is not likely he is going to require surgery." Dr. Erickson then noted that appellant had been transferred to his care, that he was requesting an open magnetic resonance imaging (MRI) scan and that if it revealed an active disc, he would consider a lumbar epidural steroid injection.

In a report dated May 16, 2001, an Office medical adviser stated that Dr. Erickson used sciatic nerve calculations instead of the S1 nerve calculations which resulted in a higher award. The Office medical adviser evaluated appellant's sensory and motor impairment based on the sciatic nerve and found a 22 percent impairment of the left lower extremity. However, if using the S1 nerve root distinction, the medical adviser noted that appellant would have only a six percent impairment of the left lower extremity.

By letter dated June 7, 2001, the Office advised appellant that his claim would be referred to a second opinion physician.³

On August 13, 2001 the Office referred appellant to Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, for a second opinion. In a report dated September 4, 2001, he stated that he had examined appellant on August 31, 2001 and reported findings. Dr. Kaffen stated that appellant's right calf measured 15 inches and that his left calf measured 16 inches, which indicated right lower extremity atrophy. He also noted bilateral valgus deformity of the hindfoot of approximately 15 degrees each. Dr. Kaffen stated that appellant had a 12 percent impairment of the right foot due to hindfoot deformity and also a 12 percent left foot impairment for hindfoot deformity. Dr. Kaffen found an additional 5 percent impairment based on motor and sensory impairments, for a total of 16 percent right lower extremity impairment. He noted

² *Id.* at 78, Table 42.

³ On June 26, 2001 the Office doubled appellant's claims under A9-362993.

that, while appellant's condition had not resolved and would require further treatment, maximum medical improvement had been reached.

In a report dated September 30, 2001, an Office medical adviser, upon review of appellant's records including Dr. Kaffen's report, determined that appellant had a 17 percent right lower extremity impairment and a 16 percent left lower extremity impairment.

By decision dated October 19, 2001, the Office awarded appellant an additional 5 percent impairment of the right lower extremity for a total 17 percent right lower extremity impairment and an additional 4 percent impairment of the left lower extremity for a total of 16 percent left lower extremity impairment on claim number 09-322772. The period of the award ran from August 31, 2001 to February 28, 2002.

By letter received by the Office on December 3, 2001, appellant requested reconsideration.

By decision dated February 13, 2002, the Office denied modification of its October 19, 2001 schedule award decision.⁴

The Board finds that appellant has no more than a 16 percent of the left lower extremity. As to the right lower extremity the case is not in posture for decision.

The schedule award provision of the Federal Employees' Compensation Act⁵ and its implementing regulation⁶ 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.⁷

In this case, the Office medical adviser relied on the findings of Dr. Kaffen, who found that appellant had a 16 percent impairment of the right lower extremity and a 12 percent impairment of the left lower extremity, in his September 30, 2001, report. The Office medical adviser found that appellant's hindfoot ankylosis valgus of 15 degrees resulted in a 12 percent impairment of the right and left foot.⁸ Based on Dr. Kaffen's finding of lateral plantar nerve

⁴ The Office noted that it had combined appellant's bilateral foot condition and his lumbosacral strain and herniated disc into a single claim, 09-0362993. The Office also noted that appellant had filed a claim on December 4, 2001 for a traumatic injury to his right knee which the Office accepted for right knee strain and torn meniscus. This claim is not presently before the Board.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404 (1999).

⁷ *Id.*

⁸ A.M.A., *Guides* 537, 17-13.

(Grade IV) sensory deficit,⁹ appellant had a 1.25 percent sensory nerve deficit;¹⁰ and that his finding of common peroneal nerve (Grade IV) motor deficit¹¹ equaled a 4.2 percent motor deficit.¹² Based on the Combined Values Chart,¹³ the combined impairments resulted in a 17 percent right lower extremity impairment. Regarding appellant's left lower extremity, the (Grade IV) motor loss of the common peroneal equaled a 4.2 percent sensory deficit¹⁴ and, when combined with 12 percent,¹⁵ resulted in a 16 percent left lower extremity impairment rating.

The Board finds that appellant has no more than a 16 percent impairment of the left lower extremity for which the Office granted a schedule award. However, the Board notes that Dr. Kaffen also found right lower extremity atrophy due to appellant's leg having one less inch of width than his left leg. The Office medical adviser did not address appellant's right lower extremity atrophy and thus the case must be remanded to the Office to address this impairment.¹⁶ Upon remand, the Office will determine the amount of impairment to appellant's right lower extremity as a result of his atrophy and issue a *de novo* award for the right lower extremity.

⁹ *Id.* at 484, Table 16-11.

¹⁰ *Id.* at 552, Table 17-37

¹¹ *Supra* note 9.

¹² *Supra* note 10.

¹³ A.M.A., *Guides*, 622.

¹⁴ *Supra* note 8.

¹⁵ *Supra* note 13.

¹⁶ *Id.* at 530, Table 17-6.

The February 13, 2002 decision of the Office of Workers' Compensation Programs is affirmed regarding appellant's 16 percent left lower extremity impairment rating and remanded for further development regarding whether appellant's right leg atrophy would entitle him to more than a 17 percent schedule award for the right lower extremity.

Dated, Washington, DC
June 26, 2003

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member