United States Department of Labor
Employees' Compensation Appeals Board

JAMES F. FLYNN, Appellant	)	
and	)	**Docket No. 04-748**
	)	**Issued: August 24, 2004**
U.S. POSTAL SERVICE, ELLICOTT STATION, Buffalo, NY, Employer	)	

Appearances:
James F. Flynn, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On January 27, 2004 appellant filed a timely appeal from the decision of the Office of Workers' Compensation Programs dated December 1, 2003, wherein the Office issued appellant a schedule award for a nine percent impairment to his left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award.

ISSUE

The issue is whether appellant has more than a nine percent impairment of his left lower extremity.

FACTUAL HISTORY

On August 17, 2000 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim alleging that, on that date, while twisting, turning and casing mail for three hours, he sustained a strain and swelling in the lower left leg and ankle. The Office accepted this case for left Achilles tendinitis.

On September 12, 2001 appellant filed a claim for a schedule award.

On October 4, 2001 the Office asked Dr. Graham R. Huckell, appellant's treating Board-certified orthopedic surgeon, to determine the extent of permanent partial impairment to appellant's left ankle due to the August 17, 2000 injury pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th edition 2001). Dr. Huckell responded by sending the Office a copy of his September 12, 2001 report wherein he noted that appellant continued to walk with a limp, had an inability to stand on his toes on the left and has a complete tear of his left tendo-Achilles. He indicated that, based on the New York State Guidelines, appellant had a 24 percent scheduled loss of the left foot causally related to the injury of August 17, 2001. On February 4, 2002 Dr. Huckell responded to the Office's letter dated December 17, 2001 by indicating that appellant had pain if he walked for more than 45 minutes, that he had loss of function due to Achilles tendon rupture, that he used a brace but did not require prosthetic replacement and did not show loss of lower extremity length or causalgia or reflex sympathetic dystrophy. He indicated that appellant had slight pain in his left ankle. Dr. Huckell noted the range of motion of the affected ankle compared to the opposite ankle as follows:

> "1. Dorsiflexion: affected vs. opposite: **Left 0/Right 10** (normal to 20 degrees).
>
> "2. Plantar flexion: affected vs. opposite: **Left 30/Right 60** (normal to 40 degrees).
>
> "3. Inversion: affected vs. opposite: **Left 25/Right** 15 (normal to 30 degrees).
>
> "4. Eversion: affected vs. opposite: **Left 0/Right 12** (normal to 20 degrees).
>
> "5. Is there any anklylosis and, if so, at what degree and which joint is fused? **No.**" (Emphasis in the original.)

He also noted the date of maximum medical improvement as September 12, 2001.

By letter dated July 16, 2002, the Office asked the Office medical adviser to evaluate appellant's entitlement to a schedule award based on loss of use of the left ankle. He indicated that, based on appellant's range of motion, pursuant to page 537, Table 17-11 and 17-12, a mild loss exists which equals 7 percent for plantar flexion and 2 percent for eversion for 9 percent total.

On January 22, 2003 the Office issued a schedule award based on nine percent impairment of the left lower extremity.

By letter dated February 20, 2003, appellant requested an oral hearing. This hearing was held on October 21, 2003.

By decision dated December 1, 2003, the hearing representative affirmed the January 22, 2003 decision, finding that appellant had a nine percent permanent impairment for which he received a schedule award.[1]

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation[3] sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of schedule 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.[4]

ANALYSIS

In the instant case, the Office cannot use Dr. Huckell's conclusion that appellant had a 24 percent impairment of the left foot based on the New York State Guidelines, as the Office applies the A.M.A., *Guides* to make its determination. The only doctor who applied the A.M.A., *Guides* is the Office medical adviser, who indicated that, pursuant to Tables 17-11 of the A.M.A., *Guides*, appellant was entitled to an award of seven percent for plantar flexion and pursuant to Table 17-12 was entitled to two percent for eversion, or a total of nine percent impairment of the left lower extremity. However, after careful review of the record, the Board concludes that the Office medical adviser did not properly discuss the A.M.A., *Guides*. Although the Office medical adviser properly noted that appellant had two percent impairment due to eversion pursuant to Table 17-12, it is not clear how he arrived at his conclusion that appellant is entitled to an impairment rating of seven percent for plantar flexion. The Board notes that the Office medical adviser's finding of seven percent for plantar flexion capability pursuant to Table 17-11 of the A.M.A., *Guides* is unexplained. The Office medical adviser must properly explain his conclusion. Accordingly, this case must be remanded in order for the Office to ask the Office medical adviser to further explain his conclusions.

CONCLUSION

The case is not in posture for decision. The record is remanded in order for the Office to have the Office medical adviser further explain his calculations.

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[1] Appellant submitted additional evidence after the Office's December 1, 2003 decision. The Board may not consider this evidence since its review of a case is limited to the evidence in the case which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

[2] 5 U.S.C. § 8107 (a)-(c).

[3] 20 C.F.R. § 10.404.

[4] *See Mark A. Holloway*, 55 ECAB ____ (Docket No. 03-2144 issued February 13, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 1, 2003 is hereby vacated, and this case is returned to the Office further consideration consistent with this opinion.

Issued: August 24, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member