

**United States Department of Labor
Employees' Compensation Appeals Board**

STEVE BELMAN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kansas City, MO, Employer**

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**Docket No. 04-940
Issued: August 19, 2004**

Appearances:
Steve Belman, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 26, 2004 appellant filed a timely appeal of the January 20, 2004 merit decision of the Office of Workers' Compensation Programs, which granted appellant a schedule. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award claim.¹

ISSUE

The issue is whether appellant has more than a seven percent impairment of the left lower extremity for which he received a schedule award.

FACTUAL HISTORY

On August 8, 1998 appellant, then a 44-year-old letter carrier, slipped off of a retaining wall and injured his left leg in the performance of duty. The Office accepted appellant's claim

¹ The record on appeal includes evidence that was received after the Office issued its January 20, 2004 decision. The Board's review is limited to the evidence in the case record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

for fracture of the left tibia and fibula. Additionally, the Office authorized surgery, which appellant underwent on August 9 and 14, 1998.

On August 20, 2002 appellant filed a claim for a schedule award. In a June 18, 2002 report, Dr. Timothy M. Badwey, a Board-certified orthopedic surgeon, indicated that appellant had reached maximum medical improvement. He noted that appellant's left ankle demonstrated 5 degrees of dorsiflexion and 45 degrees of plantar flexion. Additionally, Dr. Badwey indicated that subtalar motion on the left side showed 20 degrees of inversion and 5 degrees of eversion. He stated that appellant had a 24 percent impairment of the left lower extremity.

The Office referred appellant to Dr. George Varghese, a Board-certified physiatrist, who examined appellant on November 18, 2002. In a December 12, 2002 report, Dr. Varghese noted that appellant continued to have pain in the ankle with prolonged standing and walking. He indicated that appellant's dorsiflexion was 10 degrees, plantar flexion was 25 degrees, inversion was 20 degrees and eversion was 30 degrees. He also indicated that toe extension and flexion and the neurological examination were normal. Dr. Varghese noted that appellant's November 18, 2002 x-ray showed mild degenerative changes along the distal end of the tibia and that joint space at this level was three millimeters and that appellant reached maximum medical improvement. He provided an impairment rating in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). He advised that, for the degenerative arthritis, pursuant to the A.M.A., *Guides*, 544, Table 17-31, three millimeter measurement at the ankle joint gave appellant a five percent rating. For range of motion, the physician referred to the A.M.A., *Guides*, 537, Table 17-11, and advised that appellant was entitled to a seven percent rating for his mild limitation of dorsiflexion. Dr. Varghese advised that, since no loss of strength was detected, no rating was given. Regarding pain, he noted that appellant's pain was due to degenerative arthritis, which had already been taken into consideration and could not be combined with range of motion pursuant to the A.M.A., *Guides*, 526, Table 17-2. The physician explained that he had selected range of motion alone which provided appellant with a seven percent rating for the left lower extremity.

On December 22, 2002 the Office medical adviser reviewed Dr. Varghese's December 12, 2002 report and agreed that appellant had a seven percent impairment of the left lower extremity as a result of the August 8, 1998 work injury.

By decision dated January 13, 2003, the Office granted appellant a schedule award for a total of 20.16 weeks of compensation for 7 percent permanent impairment of the left lower extremity.

The Office received a January 28, 2003 report in which Dr. Badwey indicated that appellant had post-traumatic arthritis of the left ankle, which he managed with anti-inflammatories on a daily basis. He advised that appellant's need for anti-inflammatories was ongoing and indefinite. Dr. Badwey opined that appellant might require additional surgery consisting of an ankle arthrodesis.

By letter dated February 7, 2003, appellant requested a hearing, which was held on October 21, 2003. By decision dated January 20, 2004, the Office hearing representative affirmed the January 13, 2003 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.² The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁴

ANALYSIS

In a report dated June 18, 2002, appellant's physician, Dr. Badwey, indicated that appellant was entitled to a 24 percent impairment of the left lower extremity. However, Dr. Badwey's report is insufficient to establish the extent of appellant's impairment because the doctor did not provide a rating in accordance with the A.M.A., *Guides*.⁵ Dr. Badwey did not describe the basis for the 24 percent impairment rating nor did he reference specific tables in the A.M.A., *Guides*. Consequently, Dr. Badwey's June 18, 2002 report is of limited probative value.⁶

The Office properly referred appellant to Dr. Varghese and the Office medical adviser, who concluded that appellant had a seven percent rating for the left lower extremity. In his December 12, 2002 report, Dr. Varghese explained his calculations and findings. He examined appellant and in accordance with the A.M.A., *Guides* referred to specific pages and tables. For range of motion, he used a goniometer, for strength he determined that appellant's findings along with extension and flexion were normal. He also found a normal neurological examination. Dr. Varghese also referred to the x-ray when making his findings and opined that appellant reached maximum medical improvement on November 18, 2002. In addition, the physician explained why, according to the A.M.A., *Guides*, 526, Table 17-2, appellant could not receive a rating for both arthritis and loss of range of motion.

The Office medical adviser reviewed Dr. Varghese's December 12, 2002 findings and, utilizing the A.M.A., *Guides*, advised that appellant had a seven percent impairment of the left lower extremity as a result of the August 8, 1998 work injury. Dr. Varghese reported 10 degrees of dorsiflexion and based on these measurements he properly found 7 percent impairment of the

² The Act provides that for a total, or 100 percent loss of use of a leg, an employee shall receive 288 weeks compensation. 5 U.S.C. § 8107(c)(2).

³ 20 C.F.R. § 10.404 (1999).

⁴ FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁵ See 20 C.F.R. § 10.333 (1999).

⁶ *Mary L. Henninger*, 52 ECAB 408, 409 (2001).

left lower extremity under A.M.A., *Guides*, 537, Table 17-11. Appellant has not submitted any credible medical evidence establishing that he has a greater impairment than that reported by Dr. Varghese and the Office medical adviser. Inasmuch as Dr. Varghese's calculation conforms to the A.M.A., *Guides* (5th ed. 2001), his finding constitutes the weight of the medical evidence.⁷

CONCLUSION

The Board finds that appellant failed to establish that he has more than seven percent permanent impairment of the left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).