United States Department of Labor
Employees' Compensation Appeals Board

EMOGENE P. MOORE, Appellant	)	
and	)	**Docket No. 04-1700**
	)	**Issued: December 10, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Memphis, TN, Employer	)	

Appearances:
Emogene Moore, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On June 25, 2004 appellant filed a timely appeal from the March 31, 2004 merit decision of the Office of Workers' Compensation Programs, which denied her claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the denial.

ISSUE

The issue is whether appellant is entitled to a schedule award for her accepted employment injury on March 19, 2002.

FACTUAL HISTORY

On March 19, 2002 appellant, then a 41-year-old letter carrier, sustained an injury in the performance of duty when she tripped on a rug on a customer's porch, striking the top of her foot on a wrought iron rail and the bottom of her foot on a brick. The Office accepted her claim for right stress fracture and tendinitis, top of foot. She underwent an exostectomy procedure on the dorsal aspect of her right talonavicular joint on March 20, 2003, which the Office authorized.

Beginning that date she received compensation for temporary total disability on the periodic rolls. She returned to limited duty on April 28, 2003.

On August 13, 2003 appellant filed a claim for a schedule award. The Office gave Dr. Joel M. Cook, her podiatrist and surgeon, instructions for evaluating any permanent impairment resulting from the employment injury. On December 22, 2003 Dr. Cook related appellant's history of a fracture to the right talonavicular area with subsequent development of a bony overgrowth, or bone spurs, on the dorsal aspect of the joint, which limited motion and caused pain. Dr. Cook explained that the spur was surgically removed but that appellant continued to have arthritic pain at that joint on weight bearing and physical activity. In addition to her physical impairment, he stated, appellant suffered from pain impairment; she was unable to work her normal daily duties without severe pain and discomfort by the end of the day. Dr. Cook advised that appellant reached maximum medical improvement on August 12, 2003. He offered the following rating on permanent impairment:

> "According to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, 5th Edition, Table 17-33, talonavicular bone, she has a 10 percent foot impairment and according to Table 18-3 she has Class 2 impairment to pain above and beyond her initial impairment of another 5 percent. This would total 15 percent impairment of the foot."

An Office medical adviser reviewed Dr. Cook's evaluation and noted that there were no diagnosis-based estimates for a fracture to the talonavicular area and that the pain score was not given according to Table 18-6. He suggested that range of motion was the best way to rate appellant's permanent impairment.

The Office asked Dr. Cook to respond to the medical adviser's comment. Dr. Cook copied pages from the A.M.A., *Guides* and explained on March 4, 2004 that there was an additional five percent impairment due to pain not relative to the objective findings. The Office medical adviser reported that Dr. Cook was not using the A.M.A., *Guides* properly:

> "Dr. Cook states patient has a 15 percent foot permanent partial impairment for pain according to Table 18-3, 5th ed. A.M.A., *Guides*, Class 2. This citing does not translate to a 10 percent rating. Dr. Cook has not used the pain guides properly. In my opinion this condition does not fulfill the requirements for chronic pain impairment. Also Table 17-33 does not rate this fracture as no displacement was demonstrated, in fact, there is probably no relationship to the spur which was operated on and the accepted condition. I suggest a denial."[1]

In a decision dated March 31, 2004, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not support a permanent impairment to a scheduled member of the body. The Office found that Dr. Cook did not correctly use the tables and charts in the A.M.A., *Guides*. The Office further found that the medical adviser's rationale – that there was no chronic pain impairment and no relationship to the accepted condition – "carries the weight of our decision."

[1] Dr. Cook reported that appellant had an additional five percent impairment of the right foot due to chronic pain.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[2] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[3]

ANALYSIS

Some impairment estimates are assigned more appropriately on the basis of a diagnosis than on the basis of findings on physical examination.[4] Table 17-33, page 546, of the A.M.A., *Guides* provides diagnosis-based estimates for certain lower extremity impairments: An intra-articular fracture with displacement of the talonavicular bone (hindfoot) represents a 10 percent impairment of the foot. This appears to be the basis of Dr. Cook's estimate, but as the Office medical adviser observed, no displacement has been demonstrated in appellant's case. Without evidence of a displaced fracture, the Board finds that Table 17-33 of the A.M.A., *Guides* does not support Dr. Cook's estimate of a 10 percent impairment due to the accepted talonavicular fracture.

Table 18-3, page 575, of the A.M.A., *Guides* provides impairment classifications due to pain disorders. Dr. Cook estimated that appellant had an additional five percent impairment of the right foot due to pain not relative to the objective findings. He described this as a Class 2 or moderate impairment under Table 18-3, but he gave no explanation how he arrived at his rating. Chapter 18 of the A.M.A., *Guides* provides physicians with a qualitative method for evaluating permanent impairment due to chronic pain.[5] Dr. Cook gave no indication that he followed this method.

Appellant filed a claim for a schedule award on August 13, 2003 and therefore has the burden of proof to establish that her accepted employment injury on March 19, 2002 or her authorized surgery on March 20, 2003 caused a permanent impairment to her right foot. Because Dr. Cook's December 22, 2003 and March 4, 2004 reports do not support that she has a 10 percent impairment due to the accepted talonavicular fracture and do not explain under Chapter 18 of the A.M.A., *Guides* how she has an additional 5 percent impairment due to chronic pain, the Board finds that appellant has not met her burden of proof.

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[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001 the Office began using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). FECA Bulletin No. 01-05 (issued January 29, 2001).

[4] A.M.A., *Guides* 548.

[5] *Id*. at 565.

CONCLUSION

The medical evidence in this case fails to establish that appellant is entitled to a schedule award for her accepted employment injury on March 19, 2002.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member