

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

GLENN L. ACHESON, Appellant)
)
and) Docket No. 04-1865
) Issued: December 15, 2004
)
U.S. POSTAL SERVICE, POST OFFICE,)
Woodbury, NJ, Employer)
_____)

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of the 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 July 22, 2004 appellant filed a timely appeal of an April 7, 2004 decision of the Office of Workers' Compensation Programs, finding that he did not have more than a two percent permanent impairment to his left leg. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award issue in this case.

ISSUE

The issue is whether appellant has more than a two percent permanent impairment to his left leg, for which he received a schedule award on July 14, 1998.

FACTUAL HISTORY

The case was before the Board on a prior appeal with respect to a left leg permanent impairment.¹ As the Board noted, the Office accepted that appellant sustained a left ankle strain and avulsion fracture of the left ankle as a result of an April 30, 1997 employment incident. On

¹ Docket No. 00-1484 (issued April 27, 2001).

July 14, 1998 the Office issued a schedule award for a two percent permanent impairment to the left leg. The award was based on an opinion from an Office medical adviser that the medical evidence showed loss of range of motion in the left ankle resulting in a two percent leg impairment. Additional development of the medical evidence resulted in a conflict as to the degree of permanent impairment and the case was referred to Dr. Gregory Maslow, a Board-certified orthopedic surgeon, to resolve the conflict. The Board found that Dr. Maslow failed to resolve the conflict and the case was remanded to the Office for proper resolution of the issue.

The Office referred appellant, his medical records and a statement of accepted facts to Dr. Jonathan Fox, a Board-certified orthopedic surgeon. In a report dated June 27, 2001, he indicated that appellant had residual discomfort that, "at most, is consistent with a two percent disability he has received in the past." By decision dated August 11, 2001, the Office found that appellant was not entitled to an additional schedule award. An Office hearing representative, by decision dated April 8, 2002, remanded the case for further development on the grounds that Dr. Fox did not provide sufficient explanation for his opinion.

The Office attempted to secure a supplemental report from Dr. Fox, but he did not respond to requests for an additional report. Appellant was referred to Dr. John Baker, a Board-certified orthopedic surgeon, to resolve the conflict. The record indicated that he did not appear for the scheduled examination and by decision dated June 28, 2002, the Office determined that appellant had obstructed the examination. In a decision dated February 20, 2003, an Office hearing representative vacated the prior decision, noting that appellant had notified the Office of a change of address and directing the Office to refer him to an impartial medical specialist near his current residence.

In accord with the hearing representative's decision, the Office referred appellant, his medical records and a statement of accepted facts, to Dr. Frank Kriz, Jr., a Board-certified orthopedic surgeon. By report dated April 14, 2003, he provided a history, results on examination and reviewed medical evidence. Dr. Kriz noted in his history that appellant had been released to full duty in August 1997 with no complaints of pain in the left foot or ankle and he "continued at his full duties as a mail carrier without any restrictions referable to the left ankle until 1997 when he experienced an increase in low back symptoms which ultimately required surgery in 1998." With respect to the left ankle, Dr. Kriz provided range of motion results of 20 degrees dorsiflexion, 60 degrees plantar flexion, 30 degrees inversion and 30 degrees eversion. He indicated that he found no objective evidence of loss of range of motion, motor strength or sensory deficit. Dr. Kriz reported slight atrophy of the left calf causally related to lumbar spinal disease, not the April 30, 1997 injury. He noted appellant's subjective complaints of left ankle tenderness if he hit a step in the wrong manner, but appellant had no complaints with normal walking or stair climbing. The impartial medical specialist stated that he reviewed the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) and further stated that "there was no evidence of permanent impairment to justify a rating. There is no loss of use in the patient's ability to perform all of his activities of daily living; there are no restrictions on his level of activities. There are no nerve deficits and no vascular disorders involving the left foot and ankle and no ligamentous instability. There is no gait impairment and no range of motion restrictions."

By decision dated April 28, 2003, the Office determined that the medical evidence did not support an additional schedule award to the left leg. Appellant requested a hearing, which was held on February 18, 2004. In a decision dated April 7, 2004, an Office hearing representative affirmed that appellant was not entitled to an additional schedule award for the left leg.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use, of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither the Act nor the regulation specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁴

ANALYSIS

The Office referred appellant to Dr. Kriz to resolve a conflict in the medical evidence pursuant to 5 U.S.C. § 8123(a) regarding the degree of permanent impairment to the left leg from the April 30, 1997 injury. He provided a complete report with a reasoned medical opinion that appellant did not have a permanent impairment under the A.M.A., *Guides*. He discussed in detail the physical findings and found full range of motion⁵ with no sensory deficit, motor or nerve impairment. Dr. Kriz noted some subjective complaints of tenderness at certain times, but found that the complaints were insufficient to warrant an impairment rating. He provided a detailed opinion on the issue presented that was based on a complete background. The Board finds that his opinion is entitled to special weight and it represents the weight of the evidence in this case.

On appeal appellant's representative indicated that appellant had an accepted back injury from another claim and argued that the case files should be combined and a supplemental report secured from Dr. Kriz because he identified a low back injury as the cause of left leg weakness. There is no evidence, however, that Dr. Kriz found any relationship between the ankle injury at

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ A. *George Lampo*, 45 ECAB 441 (1994).

⁴ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁵ The reported ranges of motion for the ankle do not establish an impairment under the relevant tables; see A.M.A., *Guides*, 537, Tables 17-11 and 17-12.

issue in this case and a low back injury. He noted in his history that appellant had low back symptoms since 1992 with an increase of symptoms in September 1997 and surgery in 1998. Dr. Kris reported a slight atrophy of the left calf which was related to lumbar spinal disease, not the April 30, 1997 injury. The conflict in this case involved the degree of permanent impairment from the April 30, 1997 injury and Dr. Kriz provided a reasoned opinion on that issue. If appellant is alleging a permanent impairment to the leg from an accepted back injury, then he may take appropriate action pursuant to the back injury claim.

CONCLUSION

The Board finds that the impartial medical specialist, Dr. Kris, resolved the conflict as to the degree of permanent impairment in the left leg from the April 30, 1997 employment injury. The weight of the evidence does not establish that appellant is entitled to more than the two percent permanent impairment awarded on July 14, 1998.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 7, 2004 is affirmed.

Issued: December 15, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member