

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

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**SHARON L. ORCUTT, Appellant**

**and**

**U. S. POSTAL SERVICE POST OFFICE,  
New York, NY, Employer**

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**Docket No. 04-424  
Issued: July 26, 2004**

*Appearances:*  
*Sharon L. Orcutt, 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 December 8, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 30, 2003, finding appellant entitled to a schedule award for a four percent permanent impairment to her left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant is entitled to a schedule award greater than four percent for the permanent impairment to her left lower extremity.

**FACTUAL HISTORY**

On July 25, 2000 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1), alleging that she injured her left foot when she tripped and stubbed her toes on a step causing her to come down sideways on her foot. In an August 7, 2000 decision, the Office accepted her claim for displaced fracture of the third metatarsal on her left foot and open

reduction and internal fixation of the left foot. On August 9, 2000 appellant underwent surgery to repair her toe. She received compensation for total temporary disability until she returned to restricted duty on February 20, 2001 and full-time unrestricted duty on November 1, 2001.

On November 16, 2001 appellant requested a schedule award. In a January 8, 2002 report, Dr. Brian Coleman, an orthopedist, stated that appellant had reached maximum medical improvement and that she had no motion at the metatarsophalangeal (MTP) joints of the third and fourth toes and had atrophy in her left calf and decreased sensation. Applying the fifth edition 2001 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Dr. Coleman opined that appellant had a 17 percent permanent impairment to her left foot and ankle, a 15 percent permanent impairment to her left lower extremity and an 8 percent permanent impairment to the whole person. The Office referred Dr. Coleman's report to Dr. Carmelita Teeter, an Office medical adviser. In an undated report, she stated that, based on Dr. Coleman's diagnosis of ankylosis of the third and fourth toes and applying Table 17-30 on page 543 of the A.M.A., *Guides*, fifth edition, she found that appellant had a six percent permanent impairment of the left foot for a four percent permanent impairment of the left lower extremity. Dr. Teeter further noted that according to page 526 of the A.M.A., *Guides*, atrophy was not to be used in conjunction with ankylosis.

In a March 1, 2002 decision, the Office found appellant entitled to a schedule award for a four percent permanent impairment of the left lower extremity. In a March 14, 2002 letter, she requested a review of the written record by the Branch of Hearings and Review. No new medical evidence was submitted. In a July 24, 2002 decision, the hearing representative affirmed the March 1, 2002 decision.

Appellant requested reconsideration of her claim. In a May 23, 2002 report, Dr. Richard Sidell, an orthopedist and Office referral physician, stated that on examination he found a healed fracture of the left third metatarsal and post open reduction internal fixation. He noted that the only residuals remaining were a very slight discomfort and a minimal decrease in range of motion of the toe. In a June 24, 2002 supplemental report, Dr. Sidell stated that appellant had reached maximum medical improvement and there would be no further alteration of her comfort level or range of motion in the toe.

In a September 3, 2002 report, Dr. Coleman stated that he applied the fifth edition of the A.M.A., *Guides* and concluded that appellant had a four percent permanent impairment of the left lower extremity. He noted that he had previously rated her under the fourth edition of the A.M.A., *Guides*. On July 10, 2003 appellant requested an additional schedule award but submitted no new evidence. In an October 30, 2003 decision, the Office denied her request finding that there was no medical evidence supporting greater than a four percent permanent impairment of the left lower extremity.

### **LEGAL PRECEDENT**

An employee seeking compensation under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable,

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

probative and substantial evidence,<sup>2</sup> including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.<sup>3</sup>

The schedule award provision of the Act<sup>4</sup> and its implementing regulation<sup>5</sup> 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 A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>6</sup>

### ANALYSIS

In the present case, the Board finds that Dr. Teeter properly applied the fifth edition of the A.M.A., *Guides* and found that it provides a four percent permanent impairment of the left lower extremity as a result of ankylosis of the third and fourth toes. Table 17-30, page 543 of the A.M.A., *Guides* clearly states that ankylosis of the third and fourth toes equates to a four percent permanent impairment of the left lower extremity and on page 526 the A.M.A., *Guides* preclude combining impairment for atrophy with ankylosis. Dr. Coleman, appellant's treating physician, indicated that she had a four percent permanent impairment of the left lower extremity as well. Furthermore, appellant submitted no probative medical evidence to the contrary.<sup>7</sup> As the report of the Dr. Teeter provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.<sup>8</sup>

However, the Board further notes that Dr. Teeter's report and the Table 17-30 of the A.M.A., *Guides* support that appellant is equally entitled to a schedule award based on a six percent permanent impairment to the left foot. This would yield a slightly larger schedule award.<sup>9</sup> While appellant is not entitled to two schedule awards for injuries to the same body part, the Board finds that she is entitled to the more favorable award; which in this case, is for the permanent impairment to the left foot.

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<sup>2</sup> *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404 (1999).

<sup>6</sup> *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

<sup>7</sup> The January 8, 2002 report by Dr. Coleman that found appellant had a 15 percent impairment of the lower left extremity, lacks sufficient rationalization to be the weight of the medical evidence as he does not identify the underlying basis of his opinion, nor does he identify the edition of the A.M.A., *Guides* he applied.

<sup>8</sup> *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

<sup>9</sup> Section 8107(c) of the Act provides 288 weeks of compensation for total loss of a leg and 205 weeks for total loss of a foot. 228 weeks times 4 percent impairment of the leg equals 11.52 weeks of compensation. While 205 weeks times 6 percent impairment of the foot equals 12.30 weeks compensation.

**CONCLUSION**

While the Office properly relied on the medical report of Dr. Teeter, appellant is entitled to the more favorable schedule award consistent with that evidence; an award based on a six percent permanent impairment to her left foot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 30, 2003 decision by the Office of Workers' Compensation Programs is affirmed as modified.

Issued: July 26, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member