

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

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<b>SANDRA N. ROSSER, Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 04-681</b>
	)	<b>Issued: May 21, 2004</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Capitol Heights, MD, Employer</b>	)	
_____	)	

*Appearances:*  
*Sandra N. Rosser, 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  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On January 15, 2004 appellant filed a timely appeal from the November 4, 2003 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 over the merits of this case.

**ISSUE**

The issue is whether appellant is entitled to more than 10.25 weeks of compensation for the permanent impairment resulting from her accepted employment injury.

**FACTUAL HISTORY**

On January 22, 2001 appellant, then a 42-year-old SPB (small parcel and bundle) keyer-clerk, sustained an injury in the performance of duty when her foot slipped on a patch of ice in the employing establishment parking lot. The Office accepted her claim for a displaced fracture of the left fifth metatarsus and paid compensation for wage loss.

On June 18, 2001 appellant filed a claim for a schedule award. Dr. Michael W. Tongue, a podiatrist, reported on April 17, 2002 that appellant's ankle demonstrated dorsiflexion of 60 degrees, plantar flexion of 60 degrees, inversion of 50 degrees and eversion of 50 degrees. He recommended an impairment rating of 10 percent of the left lower extremity, "specifically the foot."

On July 11, 2002 an Office medical adviser compared Dr. Tongue's findings to Tables 17-11 and 17-12, page 537, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001) and determined that appellant had no loss of ankle or hindfoot motion. The Office referred appellant to Dr. Robert Franklin Draper, Jr., a Board-certified orthopedic surgeon, for a second opinion.

On October 17, 2002 Dr. Draper reported that appellant had achieved maximum medical improvement. He determined that appellant had a five percent impairment of the foot according to the diagnosis-based estimate found in Table 17-33, page 547, of the A.M.A., *Guides*. Dr. Draper explained that this was the most appropriate method for determining appellant's impairment because it applied specifically to appellant's complaint of pain on standing and walking for long periods and exacerbation with heavy lifting. Using findings on physical examination, he stated, was not the most appropriate method because there was in fact no loss of motion or other finding that would reflect a ratable impairment.

On August 6, 2003 an Office medical adviser reported that he was in complete agreement with Dr. Draper's impairment rating of five percent for the left lower extremity.<sup>1</sup> The medical adviser added that appellant reached maximum medical improvement one year after her January 22, 2001 fracture, which was treated nonoperatively.

On November 4, 2003 the Office awarded appellant 10.25 weeks of compensation for a 5 percent permanent impairment of the left lower extremity.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>2</sup> authorizes the payment of schedule awards for the loss or loss of use of members, organs or functions of the body specified in the schedule. 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 A.M.A., *Guides*.<sup>3</sup>

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<sup>1</sup> Dr. Draper in fact reported a five percent impairment of the foot, not a five percent impairment of the lower extremity.

<sup>2</sup> 5 U.S.C. § 8107; see 20 C.F.R. § 10.404 (1999) (organs added to the list of schedule members).

<sup>3</sup> 20 C.F.R. § 10.404 (1999). The Office began using the fifth edition of the A.M.A., *Guides* effective February 1, 2001. FECA Bulletin No. 01-05 (issued January 29, 2001).

## ANALYSIS

According to Tables 17-11 and 17-12, page 537, of the A.M.A., *Guides*, appellant has no loss of ankle or hindfoot motion based on the ranges of motion reported by Dr. Tongue, her podiatrist. His rating of 10 percent, with no explanation or apparent basis, is of little probative value in this case.<sup>4</sup> Dr. Draper, the orthopedic surgeon and referral physician, likewise reported that there was no loss of motion or other positive clinical finding that would reflect a ratable impairment. He explained, however, that using findings on physical examination was not the most appropriate method for determining impairment in appellant's case.

The A.M.A., *Guides* supports Dr. Draper's approach: "Some impairment estimates are assigned more appropriately on the basis of a diagnosis than on the basis of findings on physical examination."<sup>5</sup> Table 17-33, page 547, provides a diagnosis-based estimate of impairment that reflects appellant's complaint of pain on standing and walking and with heavy lifting. Under the heading "forefoot deformity," a fracture at the fifth metatarsal with loss of weight transfer is given an impairment rating of five percent of the lower extremity or seven percent of the foot. Dr. Draper misread this as a five percent impairment of the foot and the Office medical adviser, while agreeing completely with Dr. Draper, stated that appellant had a five percent impairment of the lower extremity. When the Office issued the November 4, 2003 schedule award, it indicated that appellant had a five percent impairment of the left lower extremity, but it calculated appellant's compensation based on a five percent impairment of the foot.

The Board has held that where the residuals of an injury to a member of the body specified in the schedule extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, of a hand into the arm or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member.<sup>6</sup> In appellant's case, the residuals of her metatarsal fracture are not shown to extend into an adjoining area of the leg. For this reason, the Office should base her schedule award on the impairment to her foot.

As the Board noted earlier, a fracture at the fifth metatarsal with loss of weight transfer is given an impairment rating of seven percent of the foot. The Act authorizes 205 weeks of compensation for the complete loss of a foot.<sup>7</sup> Partial loss of use is compensated proportionately.<sup>8</sup> Compensation for a 7 percent impairment of a foot is, therefore, 7 percent of

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<sup>4</sup> See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

<sup>5</sup> A.M.A., *Guides* 545 (5<sup>th</sup> ed. 2001).

<sup>6</sup> *Asline Johnson*, 42 ECAB 619 (1991); *Manuel Gonzales*, 34 ECAB 1022 (1983).

<sup>7</sup> 5 U.S.C. § 8107(c)(4).

<sup>8</sup> *Id.* at § 8107(c)(19).

205 weeks, or 14.35 weeks of compensation.<sup>9</sup> The Office awarded only 10.25 weeks of compensation, an amount commensurate with only a 5 percent impairment of the foot.

The Board modifies the Office's November 4, 2003 decision to find that appellant is entitled to 14.35 weeks of compensation for a 7 percent permanent impairment of the left foot. At the pay rate used in the award, which is not at issue on appeal, appellant's impairment should entitle her to \$9,112.25 in compensation or \$2,540.75 more than the Office awarded.

### **CONCLUSION**

The Board finds that appellant is entitled to 14.35 weeks of compensation for the permanent impairment resulting from her accepted employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 4, 2003 decision of the Office of Workers' Compensation Programs is modified to find that appellant is entitled to 14.35 weeks of compensation for a 7 percent permanent impairment of the left foot. The November 4, 2003 decision is affirmed as modified and the case remanded for appropriate action consistent with this opinion.

Issued: May 21, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> Compensation for a 5 percent impairment of a leg is 5 percent of 288 weeks, or 14.40 weeks of compensation. *See id.* at § 8107(c)(2) (loss of a leg).