

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

PEARL L. FIELDS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Royal Oak, MI, Employer**

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**Docket No. 04-1422
Issued: November 23, 2004**

Appearances:
Pearl L. Fields, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On May 4, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated October 14, 2003, in which an Office hearing representative denied her request for an increased schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award issue.

ISSUE

The issue is whether appellant sustained greater than four percent impairment to her left lower extremity and greater than four percent impairment to her right lower extremity, for which she received a schedule award.

FACTUAL HISTORY

This case was previously before the Board.¹ In this case, the Office accepted that appellant, then a 37-year-old casual letter carrier, sustained bilateral ankle strains and tendinitis

¹ Docket No. 01-1957 (issued July 25, 2002).

due to a work-related incident which occurred on April 21, 1997. By decision dated July 25, 2002, the Board set aside the decisions of the Office dated March 15, 2001 and July 28, 2000, which denied her claim for a schedule award as a result of her April 21, 1997 work injury and remanded the case for further development of appellant's bilateral lower extremity impairment. Specifically, the Board noted that the January 26, 2000 medical report of Dr. David M. Vaziri, an orthopedic surgeon, presented objective findings which equated to a four percent lower extremity impairment in both of appellant's lower extremities. The facts in the Board's July 25, 2002 decision are incorporated by reference herein.

Of record, following Dr. Vaziri's January 26, 2000 report are medical notes from the Orthopedic Foot and Ankle Center dated January 11 and December 12, 2000, June 5, 2001 and February 21, 2002 noting appellant's progress. In a December 6, 2000 medical report, Dr. Boyd W. Bowden, an osteopath specializing in orthopedic surgery, noted his findings on examination, advised that appellant had reached maximum medical improvement and opined that she had a zero percent impairment under the fourth edition of the American Medical Association's, *Guidelines for Evaluation of Permanent Impairment*.

Following remand, on November 18, 2002, the Office requested that its Office medical adviser review the statement of accepted facts and the medical records of file, specifically the January 26, 2000 report from Dr. Vaziri, to determine whether appellant is entitled to a schedule award under the fifth edition of the A.M.A., *Guides*.

In a November 24, 2002 report, the Office medical adviser stated that the medical record, including the note from Dr. Vaziri on January 26, 2000, had been reviewed and opined that appellant had no objective findings which qualified her for permanent partial impairment of the lower extremity. The medical adviser stated that the June 5, 2001 and February 21, 2002 notes from the Orthopedic Foot and Ankle Center did not add any objective data to establish permanent partial impairment.²

The Office issued a schedule award on December 6, 2002 for a four percent permanent loss of the right lower extremity and a four percent permanent loss of the left lower extremity. The period of the award ran from May 22 to October 30, 2000, for a total of 23.04 weeks of compensation.

In a January 3, 2003 letter, appellant requested a hearing. The hearing took place on August 14, 2003, during which appellant testified. She was provided 30 days in which to provide additional medical evidence. However, no new evidence was submitted.

By decision dated October 14, 2003, an Office hearing representative found that appellant was not entitled to any increased schedule award over the four percent impairment previously awarded for each lower extremity on December 6, 2002. The hearing representative found that she did not submit medical evidence demonstrating a greater percentage of impairment.

² The Office medical adviser described findings based on a January 2000 examination; however, no indication was provided as to who performed the examination.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act and its implementing regulation 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.³ 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.⁴

As of February 21, 2001 the Office uses the fifth edition of the A.M.A., *Guides* to calculate new claims for a schedule award or to recalculate prior schedule awards pursuant to an appeal, request for reconsideration or decision of an Office hearing representative.⁵ Utilization of the A.M.A., *Guides* requires that a description of appellant's impairment be obtained from her attending physician⁶ in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.⁷ The Office's procedures provide that, when processing the medical evidence in a schedule award claim after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment.⁸

ANALYSIS

Following the Board's July 25, 2002 decision, the Office in a December 6, 2002 decision awarded appellant compensation for a four percent left lower extremity and a four percent right lower extremity impairment, which entitled her to 23.04 weeks of compensation. This was based on the January 26, 2000 report of Dr. Vaziri, an orthopedic surgeon, who acted as appellant's treating physician for purposes of attaining an impairment rating.

As the Board found in its July 25, 2002 decision, Dr. Vaziri's January 26, 2000 report contained objective findings which were ratable under the A.M.A., *Guides*. Range of motion findings for the right ankle: plantar flexion of 30 degrees equated to zero percent impairment;⁹

³ 5 U.S.C § 8107; 20 C.F.R § 10.404 (1999).

⁴ *Guiseppe Aversa*, 55 ECAB ____ (Docket No. 03-2042, issued December 12, 2003).

⁵ See FECA Bulletin 01-05 (issued January 29, 2001) (awards calculated according to any previous edition should be evaluated according to the edition originally used; any recalculations of previous awards, which result from hearings, reconsideration or appeals should, however, be based on the fifth edition of the A.M.A., *Guides* effective February 1, 2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(c) (August 2002).

⁷ *Noe L. Flores*, 49 ECAB 344 (1998).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(e) (August 2002).

⁹ A.M.A., *Guides*, Table 17-11 page 537, (5th ed. 2001).

dorsiflexion (extension) of 15 degrees equated to a 0 impairment;¹⁰ ankle inversion of 20 degrees equated to a 2 percent lower extremity impairment;¹¹ eversion of 10 degrees equated to a 2 percent lower extremity impairment.¹² Range of motion findings for the left ankle, as noted from Dr. Vaziri's report result in the following: plantar flexion of 30 degrees equated to a 0 impairment;¹³ 20 degrees of dorsiflexion equated to a 0 impairment;¹⁴ 20 degrees inversion equated to 2 percent lower extremity impairment;¹⁵ and 10 degrees of inversion equated to 2 percent lower extremity impairment.¹⁶ Accordingly, utilizing the A.M.A., *Guides* to Dr. Vaziri's findings, appellant has a four percent lower extremity impairment for range of motion in both her right and left legs. No hindfoot or varus or valgus abnormalities were noted in either of her ankles which equated to a zero percent impairment.¹⁷ Dr. Vaziri additionally noted that although he had subjective complaints of pain and areas of tenderness, he opined this was not ratable under the A.M.A., *Guides*.¹⁸ Thus, his report establishes that appellant is entitled to a four percent permanent impairment to her right lower extremity and a four percent permanent impairment to her left lower extremity. Although the Office medical adviser advised in his November 24, 2002 report, that appellant had no objective findings which qualified for permanent partial impairment of the lower extremity, this opinion was not based on any new medical evidence and was contrary to Dr. Vaziri's findings and contrary to the Board's finding in its prior decision.¹⁹

Subsequent to the Board's prior decision, there is no medical evidence in conformance with the A.M.A., *Guides* indicating that appellant has a greater impairment than that for which she has received a schedule award. Although she alleged that she was entitled to an increased percentage of impairment, the record contains no evidence to support an award greater than the 23.04 weeks of compensation appellant previously received for a four percent permanent impairment to her left lower extremity and a four percent permanent impairment to her right

¹⁰ *Id.*

¹¹ A.M.A., *Guides*, Table 17-12, page 537 (5th ed. 2001).

¹² *Id.*

¹³ *See supra* note 9.

¹⁴ *Id.*

¹⁵ *See supra* note 11.

¹⁶ *Id.*

¹⁷ A.M.A., *Guides*, Table 17-13, page 537 (5th ed. 2001).

¹⁸ A.M.A., *Guides*, Chapter 18, Section 18.3d, page 573 (5th ed. 2001).

¹⁹ The Board has final authority to determine questions of law and fact. Its determinations are binding upon the Office and must, of necessity, be so accepted and acted upon by the Director of the Office. Otherwise, there could be no finality of decisions and the whole appeals procedure would be nullified and questions would remain moot. *See Paul Raymond Kuyoth*, 27 ECAB 498, 503-04 (1976); *Anthony Greco*, 3 ECAB 84, 85 (1949).

lower extremity.²⁰ Accordingly, the Board finds that the Office properly calculated appellant's schedule award entitlement.

CONCLUSION

The Board finds that appellant has no more than a four percent impairment of her left lower extremity and no more than a four percent impairment of her right lower extremity and, thus, is not entitled to an additional schedule award.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated October 14, 2003 is affirmed.

Issued: November 23, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

²⁰ Under 5 U.S.C. § 8107(c)(2), complete, or 100 percent, loss of use of a leg would result in 288 weeks of compensation. Thus, for a four percent loss of use, 11.52 weeks of compensation would be payable (4 percent times 288 weeks). For a four percent impairment of each leg, 23.04 weeks of compensation is payable (11.52 plus 11.52).