

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

ROBERT A. STACER, Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Cleveland, OH,
Employer**

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**Docket No. 04-1448
Issued: November 29, 2004**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 10, 2004 appellant, through his attorney, filed a timely appeal from the Office of Workers' Compensation Programs' decision dated August 23, 2003, which affirmed the denial of appellant's claim for a schedule award. The Board has jurisdiction over this issue.¹

ISSUE

The issue is whether appellant met his burden of proof to show that he is entitled to a schedule award.

FACTUAL HISTORY

On June 30, 2002 appellant, a 45-year-old mail handler, filed a traumatic injury claim alleging that he injured his right ankle when he twisted it after stepping into a hole on the floor.

¹ See 20 C.F.R. §§ 501.2(c) and 501.3.

Appellant did not stop work. The Office accepted the claim for a right ankle strain and authorized a magnetic resonance imaging (MRI) scan, which was performed on June 30, 2002.

Appellant filed a claim for a schedule award on February 3, 2003.

By letter dated February 5, 2003, the Office requested that appellant submit medical documentation from his treating physician supporting a permanent impairment of his right ankle.

In a March 21, 2003 work capacity evaluation (Form OWCP-5c), Dr. Anthony Matalavage, a podiatrist, diagnosed right ankle sprain and tenosynovitis and stated that appellant returned to full duty with no restrictions on October 21, 2002.

By letter dated April 4, 2003, the Office requested appellant's treating physician provide the date of maximum medical improvement and the recommended percentage of any impairment using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). No response was received.

On April 21, 2003 the Office referred appellant to Dr. Sheldon Kaffen, a second opinion Board-certified orthopedic surgeon, to provide an impairment determination.

In a May 16, 2003 report, Dr. Kaffen, based upon a review of the medical evidence, employment injury history and physical examination, concluded that appellant had a zero percent impairment of his right lower extremity due to the June 30, 2002 employment injury. A physical examination revealed 40 degrees plantar flexion, 20 degrees dorsiflexion, 30 degrees eversion of the midfoot and 0 degrees inversion. He reported an August 3, 2002 x-ray interpretation was unremarkable and an October 1, 2002 MRI scan revealed "evidence of the fracture of the medial malleolus which is approximately 80 [percent] healed" and sclerosis at the area of the fracture. Based upon the objective evidence, he concluded that appellant had no residuals from his June 30, 2002 right ankle sprain and "all objective physical findings" were due to appellant's "remote injury to the right ankle which occurred in 1986."² Lastly, the physician concluded that appellant had reached maximum medical improvement on October 21, 2002 and had a zero percent permanent impairment.

On June 6, 2003 the Office denied appellant's claim for a schedule award on the grounds that appellant had no measurable impairment due to his June 30, 2002 right ankle sprain.

Appellant, through his attorney, requested an oral hearing in a June 11, 2003 letter. A hearing was held on January 27, 2004 at which appellant was represented by counsel and provided testimony.

By decision dated April 22, 2004, the Office hearing representative affirmed the denial of appellant's schedule award claim on the grounds that there was no impairment.

² The record reveals that appellant was involved in a nonemployment-related motorcycle accident in 1986 resulting in multiple fractures which required open reduction and internal fixation and subsequent removal of the internal fixation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ sets 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.⁵

To establish entitlement to a schedule award, the medical evidence must establish that appellant's impairment has reached maximum medical improvement, describe the impairment in sufficient detail for the claims examiner and others reviewing the file to visualize the character and degree of disability and give a percentage evaluation of the impairment pursuant to the A.M.A., *Guides* (5th ed. 2001).⁶ The determination of maximum medical improvement means that the physical condition of the injured member has stabilized and will not improve further.⁷

ANALYSIS

Appellant did not submit any medical evidence to establish that he is entitled to a schedule award for his June 30, 2002 employment injury, a right ankle sprain. The Office asked appellant's physician to provide an opinion regarding whether maximum medical improvement had been reached and an impairment rating pursuant to the A.M.A., *Guides* (5th ed. 2001). In response to the Office's request, appellant submitted a March 21, 2003 work capacity evaluation form by Dr. Matalavage, a podiatrist, who diagnosed right ankle sprain and tenosynovitis and stated appellant returned to full duty with no restrictions on October 21, 2002. This report did not provide an opinion on any permanent impairment of the right ankle or otherwise contain findings for making such a rating.

The Office referred appellant to Dr. Kaffen for a second opinion regarding whether maximum medical improvement had been reached, and if so, to provide an impairment rating pursuant to the A.M.A., *Guides* (5th ed. 2001). Dr. Kaffen concluded that appellant had reached maximum medical improvement on October 2, 2002, the date he returned to work with no restrictions. The physician found there was no impairment due to the accepted June 30, 2002 ankle sprain. The medical evidence of record does not support any impairment to appellant's right lower extremity due to the accepted injury.

³ 5 U.S.C. § 8017.

⁴ 20 C.F.R. § 10.404.

⁵ See *id.*; *James Kennedy, Jr.*, 40 ECAB 620 (1989); *Charles Dionne*, 38 ECAB 306 (1986).

⁶ *Jerre R. Rinehart*, 45 ECAB 518 (1994); *James E. Archie*, 43 ECAB 180 (1991).

⁷ *Orlando Vivens*, 42 ECAB 303 (1991).

The Board notes that appellant was provided with an opportunity to submit relevant medical evidence; however, the Board finds that the record does not contain sufficient medical evidence to establish any permanent impairment entitling him to a schedule award. Thus, the Office properly denied his schedule award claim.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof showing he is entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated April 22, 2004 be affirmed.

Issued: November 29, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member