

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

SONYA RESHARD, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

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**Docket No. 04-1388
Issued: October 19, 2004**

Appearances:
Sonya Reshard, 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 May 3, 2004 appellant filed a timely appeal of the January 12, 2004 merit decision of the Office of Workers' Compensation Programs, which found that she had no more than a three percent permanent impairment of the right lower extremity for which she received a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this schedule award decision.

ISSUE

The issue on appeal is whether the Office properly determined that appellant had no more than a three percent permanent impairment of the right lower extremity for which she received a schedule award.

FACTUAL HISTORY

On March 13, 2001 appellant, then a 32-year-old letter carrier, filed a claim alleging that on March 12, 2001 she was delivering mail and was attacked by two dogs and sustained injuries to her right foot. The Office accepted her condition for open wound right leg, open wound right

finger and infection of the right foot. Appellant stopped work on March 24, 2001 and returned on July 18, 2001. Appropriate compensation benefits were paid.

Appellant's physician, Dr. Wilfred Krom, a Board-certified orthopedist, noted treating her from April 15 to August 21, 2001 for a dog bite which became infected and required debridement. In his report dated June 12, 2001, he noted that appellant's wound was essentially healed and that the infection was controlled. On July 16, 2001 the physician advised that appellant was sensitive to touch over the scar which might reflect a neuroma of the dorsal sensory nerve to the tibial side of her big toe. Dr. Krom noted preexisting bunions on the left and right foot, unrelated to her industrial injury. On July 16, 2001 he returned appellant to light-duty sedentary work.

On August 22, 2001 appellant filed a Form CA-7, seeking leave buy back from August 9 to 21, 2001.

In a decision dated February 13, 2002, the Office denied appellant's claim for leave buy back on the grounds that the medical evidence was insufficient to prove that she was disabled for the time period claimed. Thereafter, appellant filed reports from Dr. Phillip K. Kwong, a Board-certified orthopedist, dated January 23, 2002 to February 13, 2003, who noted treating her for a dog bite to the right foot which occurred while she was delivering mail. He noted appellant's continued complaints of persistent pain and numbness in the great toe area with decreased range of motion. The physician recommended a polypropylene orthotic device. In his report of June 6, 2002, Dr. Kwong noted that the orthotic device relieved some of appellant's right foot discomfort, however, she still experienced pain at the first metatarsophalangeal joint. He continued appellant on restricted duty. In a report dated February 13, 2003, Dr. Kwong noted that appellant was permanent and stationary with residual disabilities. He noted decreased motion with previous cellulites, a possible capsular tissue injury from the dog bite, an injury to the first metatarsophalangeal joint of the right foot and an injury to the nerve causing permanent numbness along the great toe area, especially the hallucal nerve.

On November 23, 2003 appellant filed a claim for a schedule award.

In a memorandum dated December 10, 2003, the Office referred Dr. Kwong's report and the case record to the Office's medical adviser for evaluation as to the extent of permanent impairment of the right lower extremity in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ (A.M.A., *Guides*). The Office medical adviser determined that appellant sustained a three percent permanent impairment of the right lower extremity.² She noted that impairment to the metatarsophalangeal joint due to loss of range of motion was mild and rated a two percent impairment;³ an impairment due to sensory deficit or pain would be a Grade 4 at 25 percent of sensory deficit⁴ and the maximum sensory

¹ A.M.A., *Guides* (5th ed. 2001).

² *Id.*

³ See Table 17-14 page 537 (5th ed. 2001) (A.M.A., *Guides*).

⁴ See Table 16-10 page 482 (5th ed. 2001) (A.M.A., *Guides*).

impairment based on the medial plantar nerve was five percent⁵ for an impairment due to sensory deficit of 1 percent (25 percent x 5 percent = 1 percent), for a total permanent impairment of the right lower extremity of three percent.

In a decision dated January 12, 2004, the Office granted appellant a schedule award for a three percent permanent impairment of the right lower extremity. The schedule award was granted for the period February 13 to April 14, 2003.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁶ and its implementing regulation⁷ 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.

ANALYSIS

On appeal appellant does not specifically dispute the impairment findings of Dr. Kwong or the Office medical adviser, but argues that she has not been given overtime work since she had returned to work after her injury. However, the Board notes that there is not a claim for loss of wages for which the Office has issued a decision, therefore, the Board does not have jurisdiction over this matter.⁸

With regard to the schedule award for the right lower extremity appellant submitted a report from Dr. Kwong dated February 13, 2003. In his report of February 13, 2003, Dr. Kwong noted findings upon physical examination of decreased motion, previous cellulites, a possible capsular tissue injury, an injury to the first metatarsophalangeal joint area of the right foot and a nerve injury with permanent numbness along the great toe area, especially the hallucal nerve. The physician noted that appellant reached maximum medical improvement on February 13, 2003. However, Dr. Kwong did not make a determination on impairment in accordance with the A.M.A., *Guides*.⁹ Specifically, he noted physical findings upon examination; however, he did not provide a numerical impairment rating in conformance with the A.M.A., *Guides*. He neither provided an impairment rating nor did he reveal his calculations

⁵ See Table 17-37 page 552 (5th ed. 2001) (A.M.A., *Guides*).

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404 (1999).

⁸ The Board does not have jurisdiction over this issue in the present appeal as the Office has not rendered a decision on this matter. See 20 C.F.R. § 501.2(c).

⁹ *Id.*

for a rating including the percentage of impairment of the right extremities using the A.M.A., *Guides*. The Board has determined that a medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value.¹⁰

The medical adviser who reviewed Dr. Kwong's report correlated findings from his report to specific provisions in the A.M.A., *Guides*. The medical adviser noted, with regard to the right lower extremity, that appellant sustained a three percent permanent impairment. She also noted that impairment to the metatarsophalangeal joint due to loss of range of motion was mild and rated a 2 percent impairment¹¹ and impairment due to sensory deficit or pain would be a Grade 4 at 25 percent of sensory deficit¹² and the maximum sensory impairment based on the medial plantar nerve was 5 percent¹³ for an impairment due to sensory deficit of 1 percent (25 percent x 5 percent = 1 percent). The medical adviser determined that appellant sustained permanent impairment of the right lower extremity of three percent.

The medical adviser properly utilized the findings in Dr. Kwong's February 13, 2003 report and correlated them to specific provisions in the A.M.A., *Guides* (fifth edition) to determine the impairment rating. The medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Kwong's report and reached an impairment rating of three percent for the right lower extremity. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a three percent impairment of the right lower extremity.

CONCLUSION

The Board finds that the Office properly determined that appellant had no more than a three percent permanent impairment of the right lower extremity for which she received a schedule award.

¹⁰ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (an attending physician's report is of little probative value where the A.M.A. *Guides* were not properly followed); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

¹¹ A.M.A., *Guides*, *supra* note 3 at 537.

¹² A.M.A., *Guides*, *supra* note 4 at 482.

¹³ A.M.A., *Guides*, *supra* note 5 at 522.

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member