United States Department of Labor
Employees' Compensation Appeals Board

MAE R. ELZIE, Appellant	)	
and	)	**Docket No. 04-1333**
	)	**Issued: September 22, 2004**
DEPARTMENT OF THE ARMY, U.S. ARMY AVIATION SYSTEM COMMAND, St. Louis, MO, Employer	)	

Appearances:
Robert S. Flavin, Esq. for the appellant
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 April 21, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 24, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this schedule award decision.

ISSUE

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

FACTUAL HISTORY

On January 24, 1994 appellant, then a 42-year-old staff assistant, filed a traumatic injury claim alleging that on January 21, 1994 while walking down the hall she slipped and fell on a wet floor injuring her right side and left foot. The claim was accepted for a contusion of the right

shoulder and left calcaneous avulsion fracture. Appellant stopped work on the date of the injury and has not returned. She was released to return to work in February but voluntarily resigned on April 1, 1994.

On February 20, 2003 appellant requested a schedule award. In support of her request, she submitted a January 22, 1996 report from Dr. Donald M. McPhaul, a specialist in rehabilitation medicine, who stated that on examination of appellant's left ankle for an impairment rating he found: "Range of Motion -- (Table 42, page 78)[1]; 30 degrees plantar flexion 0 percent impairment; + 5 degrees extension 7 percent; 15 degrees eversion 0 percent; 25 degrees inversion 0 percent; 7 percent due to limited ankle ROM."

Using Table 39, page 77 to measure weakness, Dr. McPhaul found:

> "Ankle plantar flexion, extension, eversion and inversion 5/5 equals 0 percent impairment. No atrophy by comparative measurement equals 0 percent impairment."

Regarding pain/sensory loss he noted a 60 percent sensory impairment for pain and sensory loss interfering with activity (Table 20, page 151). Dr. McPhaul further stated that pain and numbness over the lateral ankle and foot fit best in the sural nerve distribution (Figure 59, page 93) and stated:

> "60 percent sensory impairment times 5 percent impairment of [the] lower extremity due to sural dysesthesia equaled 3 percent impairment of the lower extremity due to pain and numbness."

He added that appellant stated that she had not reached maximum medical improvement.[2]

On February 20, 2003 appellant requested payment of a schedule award. The Office on March 12, 2003 referred appellant for a second opinion. In a March 27, 2003 report, Dr. John A. Gragnani, a specialist in occupational and environmental medicine, stated that appellant presented with complaints of weakness, numbness and tingling involving the foot along the inferior portion of the left ankle and to the little toe area of the left foot. She reportedly had difficulty with weight bearing due to pain and occasionally felt left knee pain as well.

[1] Dr. McPhaul did not indicate what edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* he was applying.

[2] Appellant had previously submitted this report and in an April 30, 1996 decision, the Office found a schedule award was not warranted as there was no indication that appellant had reached maximum medical improvement.

Applying Tables 17-11 and 17-12, page 537 of the A.M.A., *Guides* (5th ed.) Dr. Gragnani found 24 degrees plantar flexion for a 0 percent impairment, dorsiflexion at 6 degrees for a 7 percent impairment, inversion was 20 degrees for a 2 percent impairment and eversion at 14 degrees for no impairment. He noted that os calcis angle was normal. Dr. Gragnani stated:

> "Muscle strength was normal. There is no weakness of the planar flexors, dorsiflexors, invertors or everters. Sensory change was subjective and not in particular nerve distribution since the numbness and tingling were not confined to the underside of the toe and the top of the toe is in a different distribution than the plantar branches…. Therefore, the total impairment is nine percent due to the loss of dorsiflexion and inversion."

Dr. Gragnani noted that the rating was based solely on the range of motion. He stated that appellant's pain complaints did not fit any expected pattern and that appellant had no sensory or motor deficits, therefore no rating would be made for pain. He added that appellant's date of maximum medical improvement was December 31, 1994.

The Office referred the record to Dr. Daniel D. Zimmerman, the district medical adviser, who stated, in an April 6, 2003 report, that he had reviewed Dr. Gragnani's report and found his conclusion of a nine percent permanent impairment of her left lower extremity consistent with the A.M.A., *Guides* (5th ed.).

In an April 28, 2003 decision, the Office found appellant entitled to a schedule award for a nine percent permanent impairment of her left lower extremity. The period of the award was December 31, 1994 to June 30, 1995.

On May 19, 2003 appellant requested an oral hearing that was later modified to a review of the written record. No additional evidence was submitted and, in a February 24, 2004 decision, the Branch of Hearings and Review affirmed the April 28, 2003 decision.

LEGAL PRECEDENT

The schedule award provision of the Act[3] and its implementing regulation[4] 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.[5]

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

ANALYSIS

In the present case, appellant requested a schedule award on May 19, 2003 and submitted a January 22, 1996 report from Dr. McPhaul. The Office properly referred appellant for a new medical opinion as this report was over seven years old and did not state that appellant had reached maximum medical improvement.

In his March 27, 2003 report, Dr. Gragnani evaluated appellant's impairment pursuant to the most recent edition of the A.M.A., *Guides* and found appellant entitled to a schedule award for nine percent impairment to her left lower extremity.

The Board has reviewed his report and finds that Dr. Gragnani properly applied the A.M.A., *Guides* (5th ed.). According to Table 17-11 (page 537) 24 degrees of plantar flexion does not indicate any impairment. The same table states that between 0 and 10 degrees of extension yields 7 percent impairment, so Dr. Gragnani properly concluded that 6 degrees of extension equated to a 7 percent impairment of the lower extremity. According to Table 17-12 (page 537) 20 degrees of inversion equates to 2 percent impairment and 14 degrees of eversion equates to 0 percent impairment. Dr. Gragnani therefore properly found that appellant had a 2 percent permanent impairment of the left lower extremity due to loss of inversion. Applying appellant's seven and two percent impairments to the Combined Values Chart on page 605 of the A.M.A., *Guides* Dr. Granani properly concluded that appellant had a total impairment of the left lower extremity of nine percent.[6]

Regarding an additional impairment for pain, Dr. Gragnani explained that appellant had no sensory or motor deficits which would allow an assessment of pain, and that appellant's pain complaints did not otherwise fit a pattern which could be identified as caused by the accepted injury. He therefore concluded that appellant was not entitled to an additional impairment due to pain.[7]

[6] The Board notes that, in her appeal to the Board, appellant stated that she was also seeking wage-loss compensation for the period March 8 to 28, 30 and 31, 1994. The Board further notes that the record does not contain a request for wage-loss compensation (Form CA-7) for this period nor has the Office adjudicated such a request. Therefore this subject is not within the Board's jurisdiction. *See* 20 C.F.R. § 501.2(c).

[7] A specific change in the fifth edition of the A.M.A., *Guides* allows for an impairment percentage to be increased by up to three percent for pain by using the pain chapter. A qualitative method for evaluating impairment due to chronic pain is included in Chapter 18. If an individual appears to have pain-related impairment that has increased the burden of his or her condition slightly, the examiner may increase the percentage up to three percent. If the examiner performs a formal pain-related impairment rating, he or she may increase the percentage by up to three percent and classify the individual's pain-related impairment into one of four categories: mild, moderate, moderately severe or severe. The Office, however, has stated that a separate pain calculation under Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain as outlined in Chapters 13, 16 and 17 of the fifth edition of the A.M.A., *Guides*. FECA Bulletin No. 01-05 (issued January 29, 2001).

CONCLUSION

The Board finds that appellant has not established that she is entitled to a schedule award for greater than a nine percent permanent impairment of her left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision by the Office of Workers' Compensation Programs dated February 24, 2004 is affirmed.

Issued: September 22, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member