

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

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<b>NANCY A. CHARPENTIER, Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 05-756</b>
	)	<b>Issued: August 3, 2005</b>
	)	
<b>U.S. POSTAL SERVICE, POST OFFICE, Yuba City, CA, Employer</b>	)	
	)	

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*Appearances:*  
Nancy A. Charpentier, pro se  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
DAVID S. GERSON, Judge

**JURISDICTION**

On February 9, 2005 appellant filed a timely appeal from the January 21, 2005 merit decision of the Office of Workers' Compensation Programs, finding that she did not have more than a five percent impairment of the left 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 the merits of this schedule award case.

**ISSUE**

The issue is whether appellant established that she has more than a five percent impairment of the left lower extremity for which she received a schedule award.

**FACTUAL HISTORY**

On May 22, 1998 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim alleging that on May 19, 1998 she hurt her left knee as a result of being attacked by a dog. She stated that she walked over the curb and twisted her knee. By letter dated June 16, 1988, the Office accepted appellant's claim for a left knee strain.

On October 20, 1998 appellant filed a claim alleging that she sustained a recurrence of disability in May 1998. By letter dated February 16, 1999, the Office expanded the acceptance of her claim to include left great toe sesamoditis based on the January 15, 1999 medical report of Dr. Gerald W. Cady, a Board-certified orthopedic surgeon and Office referral physician. The Office subsequently authorized a left foot neurectomy which was performed by Dr. Michael F. Gabhart, a podiatrist, on December 17, 1999.

On April 17, 2002 appellant filed a claim for a schedule award. She submitted medical reports which indicated that she was having ongoing foot problems. By letter dated December 11, 2002, the Office referred appellant together with the case record and a statement of accepted facts to Dr. Jerrold M. Sherman, a Board-certified orthopedic surgeon, for a second opinion medical examination to determine the extent of impairment due to the accepted employment injury.

Dr. Sherman submitted a January 12, 2003 medical report in which he provided a history of appellant's May 19, 1998 employment injury and medical treatment. He noted her complaints of left knee pain and left foot numbness. On physical examination, Dr. Sherman reported 100 percent pain-free range of motion of the left hip, knee, foot and toes. He provided measurements for the thighs and calves. Dr. Sherman stated that the left knee had a normal appearance with no swelling. He also stated that the left knee flexed from 0 to 140 degrees without pain and tenderness. The ligaments were intact to varus and valgus stress. Dr. Sherman reported normal drawer signs and negative McMurray and Lachman test results. Regarding the left foot, he found a well-healed four-centimeter surgical scar over the medial aspect of the left great toe, which was not tender. Dr. Sherman found decreased sensation over the medial aspect of the entire left great toe distal to the metacarpophalangeal joint. X-rays of the left knee were normal showing no fractures, osteoarthritis, osteoporosis or intra-articular calcifications. X-rays of the left foot revealed a cystic area approximately five-eighth inches in diameter within the anterior portion of the calcaneus without surrounding sclerosis or stippling. Otherwise, Dr. Sherman noted no bony defects, fractures or osteoarthritis with normal bony alignment. He stated that the large cyst within the calcaneus might require further diagnostic procedure if clinically warranted. Dr. Sherman diagnosed resolved contusion of the left knee without neurologic or mechanical deficit and left great toe status post neuromectomy involving the medial digital nerve without mechanical deficit. He opined that appellant's left knee, foot and leg conditions were stable and no further medical treatment would be curative. Dr. Sherman concluded that she reached maximum medical improvement in April 2002.

On March 12, 2003 appellant filed another claim alleging that she sustained a recurrence of disability on January 31, 2003. She stated that her foot hurt when standing on her feet and handling heavy mail. Appellant also stated that she had been involved in four dog attacks. In addition, she submitted claims for wage-loss compensation (Form CA-7), for the period January 31 through February 2 and March 15 through 20, 2003.

On April 8, 2003 an Office medical adviser reviewed appellant's case record, including Dr. Sherman's January 12, 2003 report. The Office medical adviser stated:

“The subjective complaints involving the knee would be graded a maximal [G]rade 4 as per the [g]rading [s]cheme (Table 16-10, Page 482, fifth edition of

the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. This would be a 25 percent grade of a maximal 7 percent (femoral nerve), equivalent to a rounded-off 2 percent impairment of the lower extremity or leg. In regard to the left great toe, this would also be graded a maximal [G]rade 4 or a 25 percent grade of the maximal 5 percent (branches of the medial plantar nerve), equivalent to a 1.25 or rounded off to a 1 percent impairment of the lower extremity or leg for the left great toe numbness and pain. Records do not describe any loss of range of motion at the knee, ankle, subtalar joint or toes for a zero percent impairment. The records do not indicate any atrophy or weakness for a zero percent impairment. The two combined with the one would be equivalent to a three percent impairment of the lower extremity or leg. Date of maximum medical improvement was reached by April 30, 2002, approximately five months following the neurectomy.”

By decision dated May 13, 2003, the Office found that appellant failed to establish that she sustained a recurrence of disability on January 31, 2003. In a letter dated May 14, 2003, the Office advised her that it had accepted that she sustained a recurrence of disability on January 31, 2003 due to the medical evidence she submitted on May 12, 2003. The Office accordingly vacated its May 13, 2003 decision.

In a May 27, 2003 decision, the Office granted appellant a schedule award for a three percent loss of use, of her left lower extremity based on the Office medical adviser’s opinion. The Office received medical evidence which indicated that she continued to experience problems with her left lower extremity.

In a June 4, 2003 letter, appellant disagreed with the Office’s May 27, 2003 decision and requested an oral hearing before an Office hearing representative.<sup>1</sup> She submitted medical evidence including an April 28, 2003 report of Dr. Michael C. Andrews, a Board-certified podiatrist, in which he found that appellant suffered from continuing residuals of the May 19, 1998 employment injury and that the best remedy which she followed, was to take time off from work from January 31 through February 2 and March 15 through 20, 2003.

By decision dated June 7, 2004, an Office hearing representative affirmed the Office’s May 27, 2003 decision. The hearing representative found that the Office medical adviser’s opinion constituted the weight of the medical opinion evidence. The hearing representative reversed the Office’s May 13, 2003 decision. The hearing representative found that Dr. Andrews’ April 28, 2003 report was sufficient to establish that appellant was totally disabled during the periods January 31 through February 2 and March 15 through 20, 2003.

On December 3, 2004 appellant requested reconsideration. She submitted a November 10, 2004 report of Dr. Robert W. Larsen, a Board-certified podiatrist, in which he provided a history of appellant being attacked by a dog in May 1998 and August 2001 and her medical treatment. He noted that she was not being treated for her foot condition at the time of his examination. Dr. Larsen also noted appellant’s complaints of sharp aching pain that radiated from the left forefoot to the leg which were related to how long she was on her feet. He

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<sup>1</sup> On January 30, 2004 the employing establishment advised the Office that appellant retired on disability.

reviewed her medical records and reported his findings on physical examination. Dr. Larsen found a well-healed scar on the left great toe and otherwise noted that the skin was normal in temperature, turgor, texture and coloration. He reported normal vascular findings. Dr. Larsen stated that neurologically appellant had hyperesthesia on palpation of the left great toe and pain on the second interspace of the left foot. He noted a soft tissue mass over the second metatarsal cuneiform joint which appeared to be consistent with a ganglion cyst measuring approximately three centimeters in diameter and was asymptomatic. Dr. Larsen also noted a bilateral congenital forefoot varus deformity and some antalgic gait on the left side walking with the foot in a supinated position. He reported normal x-ray results. Dr. Larsen opined that appellant's continuing residuals were caused by her employment-related foot condition and that she was a candidate for vocational rehabilitation because she could not perform all of her work duties. Based on his findings, review of appellant's medical records and guidelines for the lower extremity, Dr. Larsen opined that appellant had a 70 percent impairment.

On January 13, 2005 an Office medical adviser reviewed appellant's case record, including Dr. Larsen's November 10, 2004 report. The Office medical adviser stated:

“Review of the above file does not indicate any knee pain that would be graded more than the previous [G]rade 4 resulting in a 2 percent impairment of the lower extremity as previously calculated. However, the records do indicate left foot pain that may interfere with activity that would be graded a maximal [G]rade 3, as per the [g]rading [s]cheme (Table 16-10, Page 482, fifth edition of the [A.M.A., Guides]). This would be a 60 percent grade of a maximal 5 percent (branches of the medial plantar nerve), equivalent to a 3 percent impairment of the lower extremity or leg for pain factors. Records do not document limitation of range of motion for a zero percent impairment. Records do not document any atrophy or weakness for a zero percent impairment. The two combined with the three would be equivalent to a five percent impairment of the lower extremity or leg. Date of maximum medical improvement again would have been reached by April 30, 2002, approximately five months following the neurectomy.

Review of these records would indicate an additional impairment of some two percentage points with the current impairment of five percent compared to the previous impairment of three percent.”

By decision dated January 21, 2005, the Office granted modification of the June 7, 2004 decision to reflect that appellant was entitled to a schedule award for an additional two percent impairment of the left lower extremity based on the Office medical adviser's opinion thus, totaling a five percent schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>2</sup> and its implementing regulation<sup>3</sup> sets forth the number of weeks of compensation to be paid for

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<sup>2</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>3</sup> 20 C.F.R. § 10.404.

permanent loss or loss of use, of the members of the body listed in the schedule. Where the loss of use, is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.<sup>4</sup> However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the fifth edition of the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>5</sup>

Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from her physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>6</sup>

### ANALYSIS

Dr. Larsen found a well-healed scar on the left great toe and otherwise noted that the skin was normal in temperature, turgor, texture and coloration. He reported normal vascular findings. Dr. Larsen stated that neurologically appellant had hyperesthesia on palpation of the left great toe and pain on the second interspace of the left foot. He noted a soft tissue mass over the second metatarsal cuneiform joint which appeared to be consistent with a ganglion cyst measuring approximately three centimeters in diameter and was asymptomatic. Dr. Larsen also noted a bilateral congenital forefoot varus deformity and some antalgic gait on the left side walking with the foot in a supinated position. He reported normal x-ray results. Dr. Larsen opined that appellant's continuing residuals were caused by her employment-related foot condition and that she was a candidate for vocational rehabilitation because she could not perform all of her work duties. Based on his findings, review of appellant's medical records and guidelines for the lower extremity, Dr. Larsen opined that she had a 70 percent impairment. He did not reference the specific tables and figures he used in the A.M.A., *Guides* to calculate appellant's impairment rating. Therefore, the Board finds that Dr. Larsen's report is insufficient to establish that she has more than a three percent impairment of the left lower extremity, for which she received a schedule award.

An Office medical adviser reviewed the medical record, including Dr. Larsen's November 10, 2004 report to ascertain the degree of impairment for appellant's left lower extremity. The Office medical adviser stated that Dr. Larsen did not indicate any knee pain greater than the previous Grade 4 level which resulted in a two percent impairment of the left lower extremity. He, however, noted Dr. Larsen's finding of pain on the second interspace of the

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<sup>4</sup> 5 U.S.C. § 8107(c)(19).

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

left foot. Applying the appropriate edition of the A.M.A., *Guides* to this finding, as well as, Dr. Larsen's otherwise normal findings, the Office medical adviser graded the pain about the interspace of the left foot at the maximal Grade 3 level based on the A.M.A., *Guides* page 482, Table 16-10 which constituted 60 percent for pain that interferes with activities. He found that 60 percent of 5 percent allowed for branches of the medial plantar nerve resulted in a 3 percent impairment of the left lower extremity for pain.<sup>7</sup> The Office medical adviser noted that "[r]eview of these records would indicate an additional impairment of some [two] percentage points." He concluded that appellant had an additional two percent impairment for foot pain and that in combination with the three percent impairment of the lower extremity, for the combination of the left knee and left foot pain, previously awarded, she had a total impairment of five percent of the left lower extremity.

As the Office medical adviser properly applied the tables in the A.M.A., *Guides*, his opinion represents the weight of the medical evidence. The Board, therefore, finds that appellant has not established that she is entitled to more than the schedule award granted by the Office.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she has more than a five percent impairment of the left lower extremity for which she received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 21, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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<sup>7</sup> A.M.A., *Guides* 552, Table 17-37