

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

RUFUS JOHNSON, JR., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL AIR
STATION, Jacksonville, FL, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-1272
Issued: January 5, 2005**

Appearances:
Rufus Johnson, Jr., pro se
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 April 13, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated February 19, 2004 which found that appellant had no more than an 18 percent impairment of the right foot and 18 percent impairment of the left foot. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award of this case.

ISSUE

The issue is whether appellant has more than an 18 percent impairment of both the right and left foot.

FACTUAL HISTORY

This is the second time that this case has been before the Board. The facts and the law as set forth in the prior decision are hereby incorporated by reference.¹

¹ *Rufus Johnson, Jr.*, Docket No. 02-2341 (issued May 7, 2003).

Appellant's occupational disease claim, filed on July 14, 1972, was accepted by the Office for open wound of the finger, dermatitis and fracture of other tarsal/metatarsal bones. Appellant underwent multiple foot surgeries. On October 30, 1986 the Office issued a schedule award for a 1 percent impairment of each foot and a 19 percent impairment of each hand. By decision dated September 28, 2002, the Office issued a schedule award for an additional 17 percent impairment of each foot.

On October 30, 2003 appellant filed a claim for an increase in his schedule award for impairment to his feet. By letter dated November 5, 2003, the Office asked Dr. William J. Namen, II, appellant's treating podiatrist, to provide an updated opinion and include an impairment rating under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.).

In a medical opinion dated December 9, 2003, Dr. Namen stated:

"Using the fifth edition of the [A.M.A., *Guides*], this patient whole person -- lower extremity impairment is now at four percent of the whole person.

"Patient has 90 percent loss of motion at all digits to both feet. This gives the patient two percent whole person -- lower extremity impairment. This patient also has 50 percent loss of inversion and eversion motion to the hind foot. This gives the patient two percent whole person -- lower extremity impairment. Patient has approximately 40 percent loss of motion to the ankle joint presently. This gives the patient six percent whole person -- and lower extremity impairment. The grand total of lower extremity impairment is now at 10 percent. Ten percent impairment of the lower extremity is four percent impairment of the whole person."

By letter dated February 11, 2004, the Office asked the Office medical adviser to determine whether there was any additional impairment to appellant's left or right foot. The Office medical adviser responded by noting that Dr. Namen suggested a 10 percent impairment of both lower extremities. The Office medical adviser noted that, pursuant to Table 17-33 of the A.M.A., *Guides*, a 10 percent impairment of the lower extremity represents a 14 percent impairment of the foot. As appellant had already been given a schedule award based on an 18 percent impairment of both the right and left foot, the Office medical adviser stated that no increase in schedule award was warranted.

By decision dated February 19, 2004, the Office denied appellant's claim for an increased schedule award.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act² and section 10.404 of the implementing federal regulation,³ schedule awards are payable for permanent impairment of

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (2002).

specified body members, functions or organs. However, the Act does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*⁴ has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁵ The fifth edition of the A.M.A., *Guides* was required on all medical opinions dated after February 1, 2001.⁶

ANALYSIS

Dr. Namen was asked by the Office to provide an impairment rating for appellant's feet under the A.M.A., *Guides*. He responded that appellant's 90 percent loss of motion at all digits to both feet would give him a 2 percent whole person -- lower extremity impairment. Dr. Namen also indicated that appellant had a 50 percent loss of inversion and eversion motion to the hind foot which would give appellant a 2 percent whole person -- lower extremity impairment. Finally, he noted that appellant had a 40 percent loss of motion to the ankle joint which would give appellant a 6 percent whole person and lower extremity impairment. Dr. Namen concluded that appellant's total impairment rating was 10 percent of each lower extremity, or a 4 percent impairment of the whole person.⁷ The Office properly referred the medical report to the Office medical adviser for a determination of whether appellant was entitled to any additional impairment to either foot. The Office medical adviser noted that, pursuant to Table 17-33 at pages 546-47 of the A.M.A., *Guides*, a 10 percent impairment of the lower extremity represents a 14 percent impairment of the foot.⁸ However, the Office medical adviser never fully evaluated Dr. Namen's opinion. For example, he did not discuss Dr. Namen's measurements for loss of inversion and eversion in the hind foot or the fact that appellant had a 90 percent loss of motion at all digits to both feet. The Office medical adviser also did not clearly explain how Dr. Namen's range of motion findings resulted in no more than the 18 percent impairment of both the right and left foot as he did not explain the conversion by using the A.M.A., *Guides*. Without a more complete discussion of how the impairment rating was reached, the Board is unable to affirm the decision.

⁴ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁵ See *Joseph Lawrence, Jr.*, *supra* note 4; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ FECA Bulletin No. 01-05 (issued January 29, 2001).

⁷ The Board notes that schedule awards are not payable under the Act for an impairment of the whole person. See *Phyllis F. Cundiff*, 52 ECAB 439, 440 (2001).

⁸ Pursuant to Table 17-33, a moderate midfoot deformity would be equal to a whole person impairment of 4 percent, a lower extremity impairment of 10 percent, and an impairment to the foot of 14 percent. A.M.A., *Guides*, page 547. Both Dr. Namen and the Office medical adviser appeared to use these figures in translating the different impairment ratings. Dr. Namen indicated that appellant had a 10 percent impairment of the lower extremity which was equal to a 4 percent impairment of the whole person. The Office medical adviser indicated that a 10 percent impairment of the whole person equals a 14 percent impairment of the foot.

Accordingly, this case is remanded to the Office for further consideration. On remand the Office shall request that the Office medical adviser provide a supplemental report clarifying his February 11, 2004 calculations. If the Office medical adviser is unable to clarify his opinion based on the information before him, the Office shall refer this case to a second opinion physician to provide a complete evaluation of appellant's impairment under the A.M.A., *Guides*. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in this case.

CONCLUSION

The Board finds that the Office's decision denying an increase in the schedule award must be vacated and this case remanded for further discussion pursuant to this opinion.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 19, 2004 is vacated and this case remanded for further consideration of the amount of appellant's schedule award.

Issued: January 5, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member