

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

SADIE B. HARRIS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Carol Stream, IL Employer**

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**Docket No. 04-1635
Issued: March 17, 2005**

Appearances:
Sadie B. Harris, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On June 14, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated April 16, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant sustained more than a three percent permanent impairment of the left lower extremity.

FACTUAL HISTORY

On November 7, 2000 appellant, then a 45-year-old-letter carrier, filed a traumatic injury claim alleging that on November 7, 2000 she injured her left ankle and foot while exiting her delivery truck in the performance of duty.¹ The Office accepted appellant's claim for left ankle sprain and left foot fracture. The Office also authorized surgeries for the removal of accessory

¹ The record reflects a prior claim for a contusion to the knee on September 3, 1999. Claim No. 100491110.

ossicle and release of adhesions around the posterior tibial nerve. In addition, the Office accepted appellant's claim for personal left foot tendinitis and left posterior tibial nerve entrapment. Appellant received appropriate benefits and the Office continued to develop her claim.

On February 10, 2003 appellant filed a claim for a schedule award.

In a December 3, 2003 report, Dr. Robert Lim, a podiatrist, advised that appellant continued to have constant pain in the plantar aspect of her left foot along with edema on a daily basis. He advised that appellant could only walk continuously for 15 to 20 minutes at a time before extreme pain would set in and she would have to get off her feet. He advised that appellant used an elastic wrap and taped her foot and ankle on a daily basis to minimize the swelling. Dr. Lim advised that appellant was currently able to maintain her work with restrictions and diagnosed medial plantar nerve entrapment of the left foot and advised that appellant had reached maximum medical improvement by March 16, 2003. He indicated that appellant had 14 percent impairment of the left foot according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001). Dr. Lim opined that this was calculated using Tables 17-37, 16-10 and 16-11.² He explained that the maximum value for a damaged medial plantar nerve due to sensory loss and pain equated to 14 percent foot impairment.³ Dr. Lim explained that a Grade 1 with a multiplier of 90 percent was chosen due to appellant's severe pain and inability to perform most activities, which resulted in 13 percent foot impairment for loss of sensation and pain. He explained that motor weakness for a damaged medial plantar nerve is seven percent. Further, Dr. Lim explained that a Grade 4 weakness with a 20 percent multiplier was chosen, resulting in 1 percent foot impairment for motor weakness. He referred to the Combined Values Chart⁴ to combine the 13 percent foot impairment for loss of sensation and pain with the 1 percent for motor weakness yields a rating of 14 percent total foot impairment.

On January 21, 2004 the Office medical adviser noted appellant's history of injury and treatment, which included removal of an accessory ossicle and release of the left posterior tibial nerve and a repeat surgical intervention for removal of scar tissue of the left foot on October 4, 2002. He reviewed Dr. Lim's December 3, 2003 report and utilizing the fifth edition of the A.M.A., *Guides*, explained that a peripheral nerve injury could not be combined with gait derangement, muscle atrophy or muscle strength, according to the cross-usage chart at Table 17-2.⁵ He advised that, as a result, appellant's impairment could not be based on peripheral nerve injury or pain. He concluded that appellant was entitled to a three percent left lower extremity impairment based upon a grade of three for pain in the distribution of the medial

² A.M.A., *Guides* 552, Table 17-37; A.M.A., *Guides* 482, Table 16-10; A.M.A., *Guides* 484, Table 16-11.

³ It appears that Dr. Lim used 7 percent for sensory loss and 7 percent for dysesthesia to arrive at a maximum 14 percent impairment due to "sensory loss and pain" for a damaged medial plantar nerve.

⁴ A.M.A., *Guides*, 604.

⁵ *Id.* at 526, Table 17-2.

plantar nerve to her left foot according to Tables 16-10 and 17-37.⁶ He advised that appellant was at maximum medical improvement on April 4, 2003.

By decision dated April 16, 2004, the Office granted appellant a schedule award for a total of 8.64 weeks of compensation for a 3 percent permanent impairment of the left lower extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁷ and its implementing regulation⁸ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage loss shall be determined. For consistent results and to ensure equal justice under the law to all appellants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all appellants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁹

ANALYSIS

The Office based its three percent award on the opinions of Dr. Lim and the Office medical adviser. In a report dated December 3, 2003, appellant's physician, Dr. Lim, indicated that appellant had attained maximum medical improvement on March 16, 2003 and that, pursuant to the A.M.A., *Guides*, appellant was entitled to an impairment of 14 percent of the foot. He followed the A.M.A., *Guides*, which indicate that sensory and motor impairments can be rated using Table 17-37 and 16-10 and 16-11.¹⁰ He followed the procedures and grading scheme set out in Table 16-10, page 482.¹¹ He graded the severity of the sensory deficit or pain according to the classifications given and selected the appropriate percentage from the range of values shown for each severity grade. Further, Dr. Lim multiplied the severity of the sensory deficit by the maximum foot impairment value to obtain the foot impairment for each nerve structure involved. He explained that a Grade 1 with a multiplier of 90 percent was chosen due to appellant's severe pain and inability to perform most activities, which resulted in 13 percent foot impairment for loss of sensation and pain. This figure resulted from multiplying the 90 percent by 14 percent (the A.M.A., *Guides* provide seven percent for a damaged medial plantar nerve for dysesthesia and seven percent for a sensory deficit¹²) which equated to

⁶ A.M.A., *Guides* 482, Table 16-10; A.M.A., *Guides* 552, Table 17-37.

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ *Id.*

¹⁰ A.M.A., *Guides* 552, Example 17-17.

¹¹ *Id.* at 482.

¹² *Id.* at 552, Table 17-37.

12.6 percent or 13 percent when rounded up. Dr. Lim further indicated that a Grade 4 weakness with a 20 percent multiplier was chosen, which when multiplied equated to .8 and rounded up resulted in a 1 percent foot impairment for motor weakness. He referred to the Combined Values Chart¹³ to combine the 13 percent foot impairment for loss of sensation and pain with the 1 percent for motor weakness for a rating of 14 percent total foot impairment.

On January 21, 2004 the Office medical adviser reviewed Dr. Lim's December 3, 2003 report and explained that a peripheral nerve injury could not be combined with gait derangement, muscle atrophy or muscle strength, according to the cross-usage chart at Table 17-2.¹⁴ He advised that, as a result, appellant's impairment could not be based on peripheral nerve injury or pain. He subsequently concluded that appellant was entitled to no more than a three percent left lower extremity impairment based upon a grade of three for pain in the distribution of the medial plantar nerve to her left foot according to Table 16-10.¹⁵ However, he did not explain how he derived at a Grade 3 for pain, when Dr. Lim explained that appellant was entitled to a Grade 1 for pain due to her severe pain and inability to perform most activities. The Board also notes that although the Office medical adviser was correct in noting that a peripheral nerve injury could not be combined with gait derangement muscle atrophy or muscle strength, he was incorrect in advising that Dr. Lim had done so. The record reflects that Dr. Lim did not use either of the aforementioned methods in determining his impairment rating. He utilized the impairment determination method noted above and did not combine the figures with calculations for gait derangement, muscle atrophy or muscle strength. Further, Dr. Lim provided an impairment rating of 14 percent to the left foot, whereas the Office medical adviser provided the rating to the left lower extremity. It is not clear and the medical adviser did not specifically address whether the evidence supported that the impairment extended from the foot into the leg.¹⁶

As the January 21, 2004 report of the Office medical adviser did not offer an acceptable basis to calculate appellant's rating, the Board finds that a conflict exist between the impairment rating of the Office medical adviser and Dr. Lim. The Office's April 16, 2004 schedule award decision is set aside and the case and remanded for an evaluation of impairment pursuant to section 8123 of the Act and the criteria set forth in the A.M.A., *Guides*.¹⁷ After such further development as may be necessary, the Office shall issue an appropriate merit decision on appellant's claim for a schedule award.

¹³ *Id.* at 604.

¹⁴ *Id.*

¹⁵ *Id.* at 482, Table 16-10.

¹⁶ Where the residuals of an injury to a member of the body specified in the schedule award provisions of the Act extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, of a hand into the arm, or of a foot into the leg, the schedule award should be made on the basis of the percentage loss of use of the larger member. *Tonya D. Bell*, 43 ECAB 845 (1992).

¹⁷ See *Philip A. Norulak*, 55 ECAB ____ (Docket No. 04-817, issued September 3, 2004). (The Board found that neither physician adequately explained their evaluations under the A.M.A., *Guides*.)

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 16, 2004 is set aside and the case remanded for further action consistent with this opinion.

Issued: March 17, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member