

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

PHIL MOORE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Monroe, LA, Employer**

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**Docket No. 05-473
Issued: May 17, 2005**

Appearances:
Phil Moore, 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
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 16, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated April 6, 2004 granting him a schedule award for a left ankle impairment and a September 14, 2004 hearing representative's decision affirming the prior decision as modified to show an impairment of the left lower extremity. 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 is whether appellant has more than a 15 percent impairment of his left lower extremity.

FACTUAL HISTORY

On May 22, 2003 appellant, then a 38-year-old automation clerk, filed a claim for a traumatic injury occurring on that date in the performance of duty. The Office initially accepted appellant's claim for an aggravation of lumbar strain and an aggravation of a herniated lumbar disc. The Office subsequently expanded appellant's claim to include an aggravation of

osteoarthritis of both knees, left ankle tarsal syndrome, an aggravation of osteoarthritis of the left ankle and left ankle heterotopic calcification.¹

On December 4, 2003 appellant filed a claim for a schedule award. He submitted an impairment evaluation dated December 17, 2003 from Dr. Stephen K. Horne, who is Board-certified in family practice. Dr. Horne found that, as appellant did not have x-rays for review, he was unable to determine “whether or not there is a significant loss of cartilage interval in the knees or ankle.” He stated:

“At this time, based on his examination for range of motion and other diagnosis-based problems, [appellant] cannot be rated for any significant problems. His lower extremity complaints would therefore be [a] zero percent impairment.

“[He] does have a mild polyneuropathy according to EMG [electromyogram] studies. This polyneuropathy according to Table 17-37, [p]age 552, falls under sciatic nerve impairment which gives [him] a whole person impairment of 5 percent and a lower extremity impairment of 12 percent. It is, however, unclear to me where this neuropathy is deriving from as it does not appear to be directly related to work and, therefore, I cannot in good conscience recommend that [he] be rated for this condition based on a work-related injury. Polyneuropathy certainly is a problem with many causes and it is not common to have work-related problems as a cause for this condition.”

In an addendum dated December 29, 2003, Dr. Horne reviewed x-rays provided by appellant and related:

“[He] does have significant loss of cartilage interval space in the left ankle. This cartilage interval space is noted between 1 [to] 2 mm [millimeters] and according to Table 17-31, [p]age 544, [he] would be rated at a 6 percent whole person impairment for this degree of loss of cartilage interval space, 15 percent lower extremity impairment for this problem, and a 21 percent foot impairment for the same problem. Please note, these numbers should not be utilized together.”

Dr. Horne combined appellant’s 5 percent whole person impairment due to polyneuropathy and his 6 percent whole person impairment for his left ankle to find a 11 percent whole person impairment.

An Office medical adviser reviewed Dr. Horne’s reports on February 12, 2004. He found that appellant had a 15 percent impairment of the left lower extremity due to arthritis of the left ankle according to Table 17-31 on page 544 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). He stated, “No consideration is given for the polyneuropathy because it is not an accepted condition.” The Office medical adviser found that appellant reached maximum medical improvement on December 17, 2003.

¹ In a report dated June 24, 2003, Dr. Scott McClelland, a Board-certified orthopedic surgeon, opined that appellant’s employment duties “aggravates the herniated disc and other back problems that [he] ha[s].”

By decision dated April 6, 2004, the Office granted appellant a schedule award for a 15 percent loss of use of the left ankle. The period of the award ran for 43.2 weeks from December 17, 2003 to October 14, 2004.

On April 24, 2004 appellant requested a review of the written record.

In a decision dated September 14, 2004, the hearing representative affirmed the Office's April 6, 2004 decision as modified to reflect that appellant had a 15 percent impairment of the left lower extremity rather than left ankle.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,² and its implementing regulation,³ sets 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standards applicable to all claimants.⁴ The Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁵

It is well established that, in determining the amount of the schedule award for a member of the body that sustained an employment-related impairment, preexisting impairments are to be included in the evaluation of permanent impairment.⁶

ANALYSIS

Appellant's attending physician, Dr. Horne, reviewed left ankle x-rays and found that appellant had a loss of one to two millimeters of cartilage interval space. He determined that, according to Table 17-31 on page 544 of the A.M.A., *Guides*, a loss of 1 to 2 millimeters of ankle cartilage interval space constituted a 15 percent impairment of the left lower extremity, or a 6 percent whole person impairment. Dr. Horne further found that appellant had polyneuropathy of the left lower extremity by EMG caused by his sciatic nerve. Dr. Horne determined that the polyneuropathy constituted a 12 percent lower extremity impairment or a 5 percent whole person impairment according to Table 17-31 on page 552 of the A.M.A., *Guides*. He opined, however, that it was unclear whether appellant's polyneuropathy was employment related. In an addendum dated December 29, 2003, Dr. Horne concluded that appellant had an 11 percent whole person impairment after combining his 5 percent impairment due to

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ 20 C.F.R. § 10.404(a).

⁵ See FECA Bulletin No. 01-05 (issued January 20, 2001).

⁶ See *Lela M. Shaw*, 51 ECAB 372 (2000).

polyneuropathy and his 6 percent left ankle impairment. The Board notes that, while the A.M.A., *Guides* provides for both impairment to the individual member and to the whole person, the Act does not provide for a permanent impairment to the whole person.⁷

On February 12, 2003 an Office medical adviser reviewed Dr. Horne's reports and concurred with his finding that appellant had a 15 percent impairment of the left lower extremity due to arthritis of the left ankle.⁸ He did not give appellant an impairment rating for his polyneuropathy as it was "not an accepted condition." It is well established, however, that in determining the amount of a schedule award for a member of the body that sustained an employment-related impairment, preexisting impairments are to be included.⁹ The Office's procedure manual provides that, in evaluating the loss of use of a scheduled member due to an employment injury, the percentage includes both employment-related impairments and "any preexisting permanent impairment of the same member or function."¹⁰ In this case, appellant would be entitled to a schedule award for his polyneuropathy if it arose from his accepted back injury or a preexisting condition and caused an impairment to his left lower extremity. The Board will, consequently, remand the case to the Office for a determination of whether appellant's polyneuropathy should be included in the calculation of his left lower extremity impairment.

On appeal appellant contends that he should receive a schedule award for a 21 percent impairment of the foot and a 15 percent impairment of the lower extremity.¹¹ Where the residuals of an injury to a scheduled member of the body extend into an adjoining area of a member also enumerated in the schedule, such as an injury of a finger into the hand, or 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.¹² The Office, properly found that entitled to a schedule award for impairment of the left lower extremity rather than a 21 percent impairment of the foot as it was the larger member and as he would receive a greater number of weeks of compensation.¹³

⁷ *Robert Romano*, 53 ECAB 649 (2002).

⁸ A.M.A., *Guides* at 544, Table 17-31.

⁹ See *Mike E. Reid*, 51 ECAB 543 (2000).

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(3) (June 2003).

¹¹ The Board has addressed appellant's other contention on appeal that he should receive a separate award for his polyneuropathy.

¹² *Charles B. Carey*, 49 ECAB 528 (1998).

¹³ Under the Act, the maximum award for an impairment of a leg is 288 weeks of compensation. A 15 percent impairment of the left leg would equal 43.2 weeks of compensation (15 percent multiplied by 288). The maximum impairment for loss of a foot under the Act is 205 weeks of compensation. A 21 percent impairment of the left foot would equal 43.05 weeks of compensation (21 percent multiplied by 205).

CONCLUSION

The Board finds that the case is not in posture for decision. The matter is remanded to the Office to determine whether appellant's polyneuropathy should be included in the calculation at the left lower extremity impairment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 14 and April 6, 2004 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: May 17, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member