United States Department of Labor
Employees' Compensation Appeals Board

FREDA J. MERCER, Appellant	)	
and	)	**Docket No. 05-1465**
	)	**Issued: November 15, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer	)	

Appearances:
Freda J. Mercer, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On June 29, 2005 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs' hearing representative dated April 12, 2005, affirming the Office's August 27, 2004 decision, awarding her a 27 percent 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 27 percent impairment of the left lower extremity for which she had received a schedule award.

FACTUAL HISTORY

On December 11, 2002 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim alleging that she sustained an injury on December 10, 2002 to the back of her left foot while in the performance of duty. The Office accepted appellant's claim for left foot strain, left tibialis tendinitis, and authorized left posterior tibial tendon reconstruction with subtalar joint

fusion and proximal tibial bone graft, and authorized physical therapy; under a prior claim,[1] the Office accepted left knee and leg sprain, and exostosis, left side.

In a report dated December 11, 2002, Dr. Nicolau Chamma, Board-certified in occupational medicine, stated that he had examined appellant on that day and related a history of injury indicating that appellant felt a pop in her left heel. In a report dated January 8, 2003, Dr. Randal Stavinoha, an internist, treated appellant for plantar fascia injury and possible tear and recommended that she stay off her feet. On April 3, 2003 Dr. Stavinoha prescribed an arch support metatarsal insert support.

In a report dated June 15, 2003, Dr. Lance Silverman, appellant's attending orthopedic surgeon to whom appellant was referred by Dr. Chamma, stated that appellant underwent surgery on June 12, 2003 for a left posterior tibial tendon reconstruction with flexor digit longus transfer to navicular, a left posterior tibial tendon transfer to flexor digit longus above the ankle, a left subtalar arthrodesis, and a proximal tibial bone graft which included cannulated screws affixed to appellant's heel.

On September 17, 2003 the Office noted that appellant returned to light duty effective on September 15, 2003. On November 3, 2003 Dr. Silverman stated that on November 3, 2003 he removed appellant's surgical implant screws.

In a report dated July 23, 2004, Dr. Raul Sepulveda, a neurologist to whom appellant was referred by Dr. Travis W. Hanson, appellant's Board-certified orthopedic surgeon, determined that she had a 12 percent whole person impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). Dr. Sepulveda reported that the left foot had 10 degrees of extension which was a 3 percent whole person impairment, 9 degrees of palmar flexion for a 6 percent moderate impairment of the whole person, 0 degrees of inversion for a 2 percent moderate impairment of the whole person and eversion of 0 degrees for a 1 percent impairment of the whole person for a combined impairment of 12 percent of the whole person.

On August 5, 2004 appellant filed a claim for a schedule award. In a statement of accepted facts dated August 11, 2004, the Office stated that it had accepted appellant's claims for left foot strain, left tibialis tendinitis, and left-sided closed fracture of the calcaneus. It added that it also accepted a left-sided condition "due to other internal orthopedic devise, implant and graft." The Office also noted that appellant underwent a procedure removing hardware from her left heel on November 3, 2003. Under a different claim number, the Office accepted left knee and leg sprain, exostosis, left side.

On August 17, 2004 an Office medical adviser reviewed Dr. Sepulveda's report in accordance with the A.M.A., *Guides* and determined that appellant had a 27 percent left lower extremity impairment.

[1] The Office doubled this claim with a prior left knee claim with a date of injury of July 24, 2000.

On August 27, 2004 the Office granted appellant a 27 percent impairment of the left lower extremity. The date of maximum medical improvement was July 23, 2004 and the award ran for 77.76 weeks from July 23, 2004 to January 18, 2006.

On September 10, 2004 Dr. Hanson noted appellant's subjective complaints of left heel pain and recommended referral to a physiatrist. On September 27, 2004 Dr. Samuel J. Alianell, a physiatrist and an associate of Dr. Hanson, diagnosed left extremity postsurgical status and a history of plantar fasciitis. He requested authorization for a night splint for static stretching. On November 10, 2004 Dr. Alianell stated that appellant had full range of motion of the hip without pain, and a range of motion of the knee of 0 to 100 degrees with minimal subpatellar crepitus throughout movement with no effusion. He noted a stable knee and a negative anterior drawer test, no joint line tenderness, calf was nontender and supple without peripheral edema, distal pulses were intact. Dr. Alianell diagnosed chronic left foot pain and right knee anterior pain syndrome. On December 13, 2004 he included a diagnosis of plantar fasciitis in his follow-up report. On March 9, 2005 Dr. Alianell noted appellant's left foot pain and status post hindfoot reconstruction.

In a decision dated April 12, 2005, the hearing representative affirmed the Office's August 27, 2004 decision.

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 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* (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[4]

The Board has long held that a schedule award is not payable under section 8107 of the Act for an impairment of the whole person.[5]

ANALYSIS

The Office medical adviser relied on the July 29, 2004 report from Dr. Sepulveda in determining the extent of appellant's permanent impairment.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Willie C. Howard*, 55 ECAB ___ (Docket No. 04-342 & 04-464, issued May 27, 2004).

[5] *Gordon G. McNeill*, 42 ECAB 140 (1990).

The medical adviser noted that Dr. Sepulveda reported left foot calcaneus fracture with tendon status post surgery, with pain, swelling mild caudation for 12 percent whole person impairment. However, as noted above, the Act does not provide for schedule awards based on whole person impairment. Consequently, it was proper for the Office medical adviser to review Dr. Sepulveda's findings and apply them to relevant tables in the A.M.A., *Guides* to arrive at an impairment calculation for schedule member under the Act, in this case the left leg.[6] Based on the fifth edition of the A.M.A., *Guides*, the Office medical adviser found the following range of motion of the left lower extremity: ankle motion on the left, extension of 10 degrees equaled 7 percent,[7] plantar flexion of 9 degrees equaled 15 percent for 22 percent.[8] Hindfoot range of motion, inversion of 0 degrees equaled 5 percent,[9] and 0 degrees of eversion equaled 2 percent impairment for 7 percent impairment.[10] Based on the Combined Values Chart page 604, by combining 22 percent and 7 percent appellant had a total of 27 percent impairment of the left lower extremity.[11] The Board finds that the medical adviser properly took range of motion findings obtained by Dr. Sepulveda and applied the A.M.A., *Guides* to these findings to arrive at an equitable impairment determination.[12]

The record includes no medical evidence, in conformance with the A.M.A., *Guides*, to support an impairment of greater than 27 percent for the left lower extremity. For example, appellant submitted reports from Drs. Hanson and Alianell but these reports do not evaluate permanent impairment of a schedule member of the body pursuant to the A.M.A., *Guides*. Accordingly, appellant has not established that she has greater than 27 percent impairment of the left lower extremity for which she has received a schedule award.

CONCLUSION

The Board finds that appellant is not entitled to more than a 27 percent permanent impairment of the left lower extremity, for which she received an award.

[6] Office procedures contemplate that an Office medical adviser will evaluate cases where the case appears to be in posture for schedule award determination. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3 (October 1990).

[7] A.M.A., *Guides* 537, Table 17-11.

[8] *Id*.

[9] *Id*. at 537, Table 17-12.

[10] *Id*.

[11] *Id*. at 604.

[12] *See Hollis L. Geary*, 40 ECAB 1175 (1989).

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2005 and August 27, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.[13]

Issued: November 15, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

[13] The Board notes that this case record contains evidence which was submitted subsequent to the Office's April 12, 2005 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).