United States Department of Labor
Employees' Compensation Appeals Board

SHARON L. DOUGLAS, Appellant	)	
and	)	**Docket No. 06-18**
	)	**Issued: February 15, 2006**
U.S. POSTAL SERVICE, POST OFFICE, East St. Louis, IL, Employer	)	

Appearances:
Sharon L. Douglas, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 3, 2005 appellant filed a timely appeal from a September 19, 2005 decision of the Office of Workers' Compensation Programs awarding her a schedule award for a six percent impairment of each lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained greater than a six percent permanent impairment of each lower extremity, for which she received a schedule award.

FACTUAL HISTORY

The Office accepted that, on or before September 18, 2000, appellant, then a 41-year-old letter carrier, sustained bilateral plantar fasciitis and bilateral bunion and hallux valgus deformities in the performance of duty, requiring bilateral bunionectomies and additional surgical correction.

Dr. Victor L. Horsley, an attending podiatrist, submitted periodic treatment notes dated from November 15, 2002 onward. On May 19, 2003 he performed a bunionectomy, correction of a second digit hammertoe on the right foot. On August 18, 2003 Dr. Horsley performed a bunionectomy and repair of a hammer deformity of the fourth toe on the left foot. He held appellant off work from May 19 to October 17, 2003, then released appellant to light-duty work.

On March 1, 2004 Dr. Horsley performed surgery on appellant's left foot to excise an exotosis to free the hallux. On the right foot, he performed a right cheilectomy at the proximal phalanx of the hallux and the first metatarsal head. Dr. Horsley submitted periodic progress notes from March to September 2004 relating appellant's continued bilateral foot pain. He noted permanent restrictions on September 2, 2004 and stated that appellant might eventually require joint replacement of the first metatarsophalangeal joint bilaterally.

In a September 23, 2004 letter, the Office requested that Dr. Horsley perform an assessment of permanent impairment due to the accepted conditions according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*). In response, Dr. Horsley submitted an October 23, 2004 report in which he completed Figure 17-10, page 561 of the A.M.A., *Guides*, entitled "Lower Extremity Impairment Evaluations Record and Worksheet." According to the grading scheme set forth in Figure 17-10, Dr. Horsley found no impairment of the pelvis hips, thighs, knees, calves or the peripheral nervous system. He opined that appellant had permanent impairment of the great toe bilaterally due to hallux valgus deformity and degenerative joint disease. Referencing Tables 17-14[1] and 17-30,[2] he found that appellant's limitation of metatarsophalangeal dorsiflexion to 10 degrees and plantar flexion limited to 15 degrees equaled a 90 percent impairment of each great toe according to Table 17-31.[3] Dr. Horsley also noted an apropulsive or antalgic gait but did not offer a percentage of impairment for this finding.

On November 12, 2004 the Office referred Dr. Horsley's October 20, 2004 report and portions of the medical record to an Office medical adviser for a schedule award determination according to the A.M.A., *Guides*.

In a November 19, 2004 report, an Office medical adviser reviewed Dr. Horsley's reports and found that appellant had attained maximum medical improvement as of September 2, 2004. The medical adviser found that, according to Table 17-14, page 537 of the fifth edition of the A.M.A., *Guides*, dorsiflexion of the first metatarsophalangeal joint limited to less than 15 degrees equaled a 5 percent impairment of each lower extremity due to loss of range of motion. The medical adviser also found a one percent impairment of each lower extremity "due to Grade

[1] Table 17-14, page 537 of the fifth edition of the A.M.A., *Guides* is entitled "Toe Impairments." According to Table 17-14, metatarsophalangeal extension of the great toe limited to less than 15 degrees represents a 5 percent impairment of the lower extremity.

[2] Table 17-30, page 543 of the fifth edition of the A.M.A., *Guides* is entitled "Impairment of the Foot Due to Ankylosis of Toes."

[3] Table 17-31, page 544 of the fifth edition of the A.M.A., *Guides* is entitled "Arthritis Impairments Based on Roentgenographically Determined Cartilage Intervals." According to Table 17-31, a 1 millimeter cartilage interval of the first metatarsophalangeal joint equals a 5 percent impairment of the lower extremity.

4 pain in the distribution of the left superficial peroneal nerve to the left great toe" according to Table 16-10,[4] page 482 and Table 16-15,[5] page 492 of the A.M.A., *Guides*. He then referred to the Combined Values Chart at page 604 of the A.M.A., *Guides* and determined that appellant had sustained a six percent impairment of the left lower extremity and a six percent impairment of the right lower extremity.

By decision dated December 13, 2004 and reissued on September 19, 2005,[6] the Office awarded appellant a schedule award for a 12 percent impairment of both lower extremities. The period of the award ran for 34.56 weeks, from September 3, 2004 to May 2, 2005.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[7] and its implementing regulation[8] 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[9]

ANALYSIS

The Office accepted that appellant sustained bilateral plantar fasciitis and bilateral bunion and hallux valgus deformities in the performance of duty, requiring bilateral bunionectomies with subsequent revision. On May 19, 2003 Dr. Horsley, an attending podiatrist, performed a bunionectomy on the right foot and corrected a second digit hammertoe. Dr. Horsley performed a bunionectomy on the left foot on August 18, 2003, with repair of a fourth digit hammertoe. To

[4] Table 16-10, page 482 of the fifth edition of the A.M.A., *Guides* is entitled "Determining Impairment of the Upper Extremity Due to Sensory Deficits or Pain Resulting from Peripheral Nerve Disorders." According to paragraph 17.2l, page 550 of the A.M.A., *Guides*, partial sensory deficits of the lower extremities are calculated "as in the upper extremity" as set forth in Table 16-10.

[5] Table 16-15, page 492 of the fifth edition of the A.M.A., *Guides* is entitled "Maximum Upper Extremity Impairment Due to Unilateral Sensory or Motor Deficits or to *Combined* 100 percent Deficits of the Major Peripheral Nerves." (Emphasis in the original.)

[6] On December 23, 2005 appellant filed an appeal with the Board, docketed as 05-936. As the Office did not submit the case record to the Board within the time allotted, on July 22, 2005, the Board issued an Order Remanding Case for proper assemblage and reconstruction of the record and issuance of an appropriate decision to protect appellant's appeal rights. During the pendency of the first appeal, appellant submitted additional evidence that has not been considered by the Office and therefore may not be considered by the Board for the first time on the present appeal. 20 C.F.R. § 501.2(c).

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404 (2003).

[9] *See id.*; *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

improve range of motion of the great toe bilaterally, Dr. Horsley excised an exotosis in the left foot and performed a cheilectomy on the right foot on March 1, 2004. Appellant experienced persistent bilateral foot pain through September 2004 and continuing.

In an October 23, 2004 report, Dr. Horsley opined that, according to the grading schemes set forth at Figure 17-10, page 561 of the A.M.A., *Guides* citing to Tables 17-14, 17-30 and 17-31, appellant had a 90 percent impairment of the great toe bilaterally as her metatarsophalangeal dorsiflexion was limited to 10 degrees and plantar flexion limited to 15 degrees due to degenerative joint disease. An Office medical adviser reviewed Dr. Horsley's reports on November 19, 2004. He noted that appellant had reached maximum medical improvement. The Office medical adviser concurred with Dr. Horsley's calculation of a five percent impairment of each lower extremity due to loss of range of motion in the great toe. The Office medical adviser added an additional one percent impairment of each lower extremity due to Grade 4 pain in the distribution of the left superficial peroneal nerve to the great toe. The Office medical adviser then combined the five percent and one percent impairments to arrive at a six percent permanent impairment of each lower extremity. The Board finds that the Office medical adviser used the appropriate portions of the A.M.A., *Guides* to determine that appellant had a six percent impairment of the right lower extremity and a six percent impairment of the left lower extremity due to the accepted bilateral foot conditions.

The Board finds that the Office medical adviser's opinion represents the weight of the medical evidence in this case. It is sufficiently rationalized and based upon the appropriate criteria as set forth in the A.M.A., *Guides*.[10]

CONCLUSION

The Board finds that appellant has not established that she sustained greater than a six percent impairment of the right lower extremity and a six percent impairment of the left lower extremity due to the accepted bilateral foot conditions.

[10] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 19, 2005 is affirmed.

Issued: February 15, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board