United States Department of Labor
Employees' Compensation Appeals Board

ALFRED J. SPINO, Appellant	)	
and	)	**Docket No. 06-69**
	)	**Issued: March 16, 2006**
U.S. POSTAL SERVICE, SCHUYLKILL STATION, Philadelphia, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
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 12 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated October 7, 2005, adjudicating his schedule award claim. 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 12 percent permanent impairment of the left lower extremity.

FACTUAL HISTORY

On March 28, 2001 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim alleging that on March 22, 2001 he injured his left leg while delivering mail when he slipped on an uneven step and fell. A March 22, 2001 medical report indicates that appellant sustained a fracture of the distal left tibia. The Office accepted his claim for a distal left tibial

fracture. On March 23 and April 25, 2001 and January 28, 2002 appellant underwent left ankle surgery. On December 18, 2002 he filed a claim for a schedule award.

On March 25, 2003 the Office asked appellant's attending physician, Dr. Harold Schoenhaus, a podiatrist, to provide an opinion as to whether he had any permanent impairment of his left lower extremity causally related to the March 22, 2001 employment injury. Dr. Schoenhaus did not respond.

In a June 5, 2003 report, Dr. Anthony W. Salem, a Board-certified orthopedic surgeon and an Office referral physician, stated:

> "[Appellant] has slightly decreased inversion of his left foot. [He] had a slightly swollen left ankle…. [T]here was normal dorsi and plantar flexion of the ankle…."
>
> * * *
>
> "Today I x-rayed [appellant's] left ankle. It showed the posterior malleolar screws well embedded in bone with the fracture anatomically healed and the joint space well preserved. There was no evidence of a loose body, spurs, chips, or arthritis. There was also no calcification of the interosseous ligament….
>
> "I feel that [appellant] has fully recovered from his surgery, although there is still some swelling in his left ankle….
>
> "I feel that [appellant] has no impairment rating based on range of motion, strength, x-ray evaluation of the joint space."

By decision dated April 13, 2004, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not establish that he had any permanent impairment of his left lower extremity causally related to his March 22, 2001 employment injury.

In an April 6, 2005 report, Dr. George L. Rodriguez, a Board-certified physiatrist, stated that appellant had constant left ankle pain which was aggravated by static postures of the ankle, as well as weight bearing. His left foot gave out occasionally when he attempted to place pressure on it after being seated and he experienced intermittent episodes of dorsal foot numbness. Dr. Rodriguez diagnosed a left medial malleolar/distal tibial fracture, status postsurgical repair, a superficial peroneal nerve injury of the left ankle and gait abnormality. He stated:

> "Evaluation of the [left] ankle reveals dorsi[flexion] is possible to 5 [degrees] from neutral, plantar [flexion] is possible to 30 [degrees] from neutral. Inversion is limited to 5 [degrees], whereas, eversion is limited to 0 [degrees]….
>
> "Sensation is intact to light touch throughout all dermatomes and nerve distributions. Strength is 5/5 in all muscle groups. Transfers are normal. Stance

is normal in bipedal support but mildly unstable in [left] monopedal support. Ambulation reveals mild [left] antalgia."

* * *

"[Appellant experiences] significantly from left lower extremity pain and loss of motion…. [T]he above-listed diagnoses are, in fact, attributable to the work-related injuries on [March 22, 2001]."

Dr. Rodriguez found that appellant had a 15 percent impairment of the left lower extremity which included 7 percent for 5 degrees of dorsiflexion (extension), according to Table 17-11 (ankle motion impairment) at page 537 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, 5 percent for 5 degrees of inversion and 2 percent for 0 degrees of eversion,[1] according to Table 17-12 (hindfoot impairment) at page 537, and 1 percent for sensory nerve impairment based on a Grade 4 deficit of the superficial peroneal nerve, according to Tables 16-11 (impairment due to motor deficit)[2] and 17-37 (impairment due to nerve deficits) at pages 484 and 552, respectively.

On May 25, 2005 appellant again filed a claim for a schedule award.

In an August 15, 2005 memorandum, a Office medical director stated that Dr. Rodriguez' finding of a one percent impairment of the left lower extremity for peroneal nerve deficiency was not supported by his physical examination in which he found that appellant had no sensory loss. He stated that appellant had a seven percent impairment due to five degrees of extension, according to Table 17-11 at page 537 of the A.M.A., *Guides* and five percent for five degrees of inversion, according to Table 17-12 at page 537. The Office medical director stated that appellant had no impairment due to eversion because the arthroscopy performed by Dr. Schoenhaus on January 28, 2002 indicated lateral and medial talar dome fraying and eversion is not usually affected by these arthroscopic findings.

By decision dated October 7, 2005, the Office granted appellant a schedule award for 34.56 weeks, for the period April 6 to December 3, 2005.[3]

[1] "Eversion" is a "turning outward" of the foot. DORLAND'S *Illustrated Medical Dictionary* (27th ed. 1988), 591.

[2] *See infra* note 9.

[3] The Federal Employees' Compensation Act provides for 288 weeks of compensation for 100 percent loss or loss of use of a lower extremity. 5 U.S.C. § 8107(c)(2). Multiplying 288 weeks by 12 percent equals 34.56 weeks of compensation.

LEGAL PRECEDENT

The schedule award provisions of the Act[4] and its implementing regulation[5] 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*[6] has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[7]

ANALYSIS

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is required.

Dr. Rodriguez stated that appellant had constant left ankle pain, his foot gave out occasionally when he attempted to place pressure on it and he experienced episodes of dorsal foot numbness. He diagnosed a left medial malleolar/distal tibial fracture, status postsurgical repair, a superficial peroneal nerve injury of the left ankle and gait abnormality. Dr. Rodriguez indicated that sensation was intact, strength was normal and stance was normal in bipedal support but mildly unstable in left monopedal support. He stated that appellant had significant left lower extremity pain and loss of range of motion. Dr. Rodriguez calculated a 15 percent impairment of appellant's left lower extremity which included 7 percent for 5 degrees of extension, according to Table 17-11 at page 537 of the A.M.A., *Guides*, 5 percent for 5 degrees of inversion and 2 percent for 0 degrees of eversion, according to Table 17-12 at page 537, and 1 percent for sensory nerve impairment based on a Grade 4 deficit of the superficial peroneal nerve, according to Tables 16-11 and 17-37 at pages 484 and 552, respectively.

The Office medical director applied Dr. Rodriguez' findings to the A.M.A., *Guides*, fifth edition and determined that appellant had a 12 percent permanent impairment of the left lower extremity which included 7 percent for decreased extension, based on Table 17-11 at page 537 and 5 percent for 5 degrees of inversion, based on Table 17-12, page 537.[8] He indicated that the one percent impairment given by Dr. Rodriguez for sensory nerve impairment was contradicted

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

[7] 20 C.F.R. § 10.404.

[8] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

by his finding that appellant had no sensory loss.[9] However, although Dr. Rodriguez indicated intact sensation, he also found significant lower extremity pain. Section 17.2l at page 550 of the A.M.A., *Guides* explains that partial sensory and motor deficits of the lower extremity should be rated by using Tables 16-10 and 16-11 in the chapter pertaining to upper extremity impairment. Table 16-10 at page 482 of the A.M.A., *Guides* provides for impairment due to sensory deficits or pain due to peripheral nerve injury. Accordingly, the finding by Dr. Rodriguez that appellant had no sensory deficit does not preclude a finding of impairment due to pain using Table 16-10.[10] The Office medical director rejected the 2 percent impairment given by Dr. Rodriguez for 0 degrees of eversion, stating that the arthroscopy performed by Dr. Schoenhaus on January 28, 2002 indicated lateral and medial talar (ankle bone) dome fraying which does not usually affect eversion. However, the Office medical director's rationale for not including eversion in appellant's impairment rating is insufficient in two respects. First, he did not provide adequate explanation as to how a finding of ankle bone "dome fraying" precludes a finding of impairment due to eversion. Second, the Office medical director did not explain how a particular physical finding in 2002 precludes a dissimilar finding in a 2005 physical examination.

Due to the deficiencies in the medical evidence, the Board finds that this case not in posture for a decision. It requires further development of the medical evidence as to appellant's permanent impairment of his left lower extremity causally related to his March 22, 2001 employment injury.

CONCLUSION

The Board finds that this case is not in posture for a decision. The case is remanded to the Office for further development of the medical evidence. After such further development as

[9] The Board notes that Table 16-11 at page 484 of the A.M.A., *Guides* is used for calculating motor deficit, not sensory deficit. Table 16-10 at page 482 is the correct table for calculating impairment due to sensory deficit or pain. Table 17-37 at page 552 provides a maximum of five percent for sensory deficit of the superficial peroneal nerve but no impairment for motor deficit regarding the peroneal nerve. Dr. Rodriguez referenced the sensory impairment section of Table 17-37 and multiplied the sensory deficit percent for the superficial peroneal nerve in that table by the Grade 4 classification for motor deficit in Table 16-11, rather than Table 16-10. It appears that Dr. Rodriguez inadvertently rated appellant's impairment due to pain caused by nerve injury using the wrong table, Table 16-11 at page 484, rather than Table 16-10 at page 482.

[10] Dr. Rodriguez assessed appellant's impairment due to pain at Grade 4 which is described at page 483 as appropriate for "abnormal sensations or pain [which are] minimal and forgotten during activity." The Grade 4 classification does not appear to be consistent with Dr. Rodriguez' statement that appellant had constant and significant left lower extremity pain.

the Office deems necessary, it should issue an appropriate decision on appellant's schedule award claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 7, 2005 is set aside and the case is remanded for further development consistent with this decision.

Issued: March 16, 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