United States Department of Labor
Employees' Compensation Appeals Board

S.L., Appellant	)	
and	)	**Docket No. 06-323**
	)	**Issued: November 7, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Orangevale, CA, Employer	)	

Appearances:
Appellant, 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 November 22, 2005 appellant filed a timely appeal of an Office of Workers' Compensation Programs schedule award decision dated October 14, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award issue.

ISSUE

The issue is whether appellant has more than three percent impairment of the left and right lower extremities for which he received a schedule award.

FACTUAL HISTORY

On January 17, 2001 appellant, then a 43-year-old city letter carrier, filed an occupational disease claim alleging that his neuritis/neuroma conditions in his feet were due to the performance of his federal duties. He stated that he first became aware of his feet conditions in December 1998 and first realized that they were caused or aggravated by his employment on January 9, 2001. On May 22, 2001 the Office accepted the condition of an aggravation of Morton's neuroma of the second and third intermetatarsal spaces of both feet and approved the

surgical excision of such conditions, which appellant underwent on March 16, 2001. Appellant returned to limited-duty work with restrictions on June 15, 2001.

On April 22, 2002 the Office received appellant's claim for a schedule award, together with copies of progress reports and attending physician reports from Larry E. Sheridan, his treating podiatrist.

In a February 10, 2004 letter, the Office advised appellant that the medical evidence did not state whether he had any impairment or that he had reached maximum medical improvement. The Office requested that he contact his physician for a current report to determine the extent of impairment of his bilateral foot condition. It enclosed an attachment for rating the foot and toes to determine impairment under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

On February 24, 2004 Dr. Sheridan stated that appellant's condition was permanent and stationary and that he had a loss of function due to pain, discomfort and hypesthesia. Appellant had peripheral neuropathy and excision of the neuromas with positive results. His pain increased with activities at work. For the great toe, Dr. Sheridan provided a 20 degree interphalangeal and a 30 degree metatarsophalangeal dorsiflexion and 20 degree plantar flexion for both feet. For toes number 2 through 5, he provided a 20 degree dorsiflexion and 20 degree plantar flexion for both feet. Dr. Sheridan further stated that appellant had atrophy of the most intrinsic foot musculature.

In a September 4, 2005 report, an Office medical adviser reviewed Dr. Sheridan's February 24, 2004 report and the fifth edition of A.M.A., *Guides*. He found that appellant had three percent impairment of the right lower extremity and a three percent impairment of the left lower extremity. There was no impairment due to loss of range of motion, but the impairment rating was based on loss of strength and sensory deficit or pain. The Office medical adviser stated that, under Table 17-37, page 552, the maximum impairment of the medial plantar nerve was 10 percent. Under Tables 16-10 and 16-11, pages 482 and 484, of the A.M.A., *Guides*, appellant had a Grade 4 or 25 percent sensory deficit. The Office medical adviser then multiplied the 10 percent maximum impairment of the medial planar nerve by the 25 percent sensory deficit to arrive at a 3 percent impairment of the left lower extremity and a 3 percent impairment of the right lower extremity.

By decision dated October 14, 2005, the Office issued a schedule award for three percent permanent impairment of the right and left lower extremities.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.[2]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Gary J. Watling*, 52 ECAB 278 (2001).

Under section 8107 of the Act[3] and section 10.404 of the implementing federal regulation,[4] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*[5] has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[6]

ANALYSIS

In this case, the Office based appellant's schedule award for three percent impairment to the right and left lower extremities on the September 4, 2005 report of an Office medical adviser. The Office's procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from the attending physician is obtained.[7]

The Office medical adviser compared the findings of Dr. Sheridan with the provisions of the A.M.A., *Guides* pertaining to impairments due to nerve deficits under Table 17-37 and Table 16-10.[8] Table 17-37 sets forth the maximum value for the identified nerve due to motor, sensory and dysesthesia. Although the Office medical adviser stated that the maximum allowed for impairment of the medial plantar nerve is 10 percent, Table 17-37 of the A.M.A., *Guides* notes a maximum of 5 percent for impairment to the lower extremity and 7 percent impairment for impairment of the foot.[9]

In arriving at her impairment calculations under Table 16-10, the Office medical adviser assigned a Grade 4 sensory deficit, for both the right and left lower extremities. Table 16-10, provides a Grade 4 sensory deficit for distorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain that is forgotten during activity and allows a 1 to 25 percent sensory deficit. Dr. Sheridan, however, noted that appellant's pain increased with activity at work. The application of Table 16-10 of the A.M.A., *Guides* requires a subjective judgment as it allows for selection of a value between a range of percentages between

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

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

[6] *See Joseph Lawrence, Jr., supra* note 5; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (August 2002).

[8] A.M.A., *Guides* (5th ed.), Table 17-37, Impairments Due to Nerve Deficits, p. 552 and Table 16-10, Determining Impairments of the Upper Extremity Due to Sensory Deficits or Pain Resulting From Peripheral Nerve Disorders, page 482.

[9] A.M.A., *Guides* 552, Table 17-37.

grades of sensory deficits when an impairment rating is assigned due to a sensory loss.[10] Dr. Sheridan indicated that appellant's pain was not "forgotten during activity" but increased with activity. His description of appellant's pain appears inconsistent with the grading criteria utilized under Table 16-10. Dr. Sheridan's opinion should be clarified.[11] The Office medical adviser did not provide any explanation for why a Grade 4 sensory deficit classification grade was selected.[12]

The Office medical adviser also found impairment due to loss of strength and noted that Table 16-11, page 484 for motor/loss of power was used. However, she did not clearly state what the impairment due to loss of strength was or provide any explanations as to how such a finding was calculated. Although the Office medical adviser noted that there was no impairment due to loss of range of motion, the Board notes that Dr. Sheridan's listed range of motions indicate additional impairment. Under Table 17-14, nonratable impairments results from a 20 degree interphalangeal flexion of the great toe, a 20 degree metatarsophalangeal plantar flexion of the great toe and a 20 degree dorsiflexion and 20 degree plantar flexion of the lesser toes. However, a 30 degree dorsiflexion (extension) of the metatarsophalangeal joint of the great toe would result in a 2 percent lower extremity impairment for each lower extremity. Under Table 17-2, page 526 of the A.M.A., *Guides*, a peripheral nerve injury may be combined with a range of motion impairment rating but not with an impairment due to loss of strength.

On remand the Office should further develop the medical evidence with regard to the extent of impairment to appellant's lower extremities. Following any further development it considers necessary, the Office shall issue a *de novo* decision on the schedule award issue.

CONCLUSION

The case is not in posture for decision as further development of the medical evidence is required.

[10] *John Keller*, 39 ECAB 543, 547 (1988).

[11] It is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. *See Horace L. Fuller*, 53 ECAB 775 (2002).

[12] See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (Office procedures provide that an Office medical adviser, in providing an opinion concerning impairment, should provide rationale for the percentage of impairment specified).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated October 14, 2005 is set aside and the case is remanded for further action consistent with this opinion.

Issued: November 7, 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