United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 07-1160**
	)	**Issued: October 12, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Hammond, IN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 26, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 1, 2007 merit decision concerning his entitlement to schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he is entitled to additional schedule award compensation for permanent impairment of his legs.

FACTUAL HISTORY

On October 17, 1995 appellant, then a 32-year-old letter carrier, filed an occupational disease claim alleging that he sustained tarsal tunnel syndrome of his left ankle condition due to the duties of his job. On November 6, 1995 appellant began to perform limited-duty work for the employing establishment. On June 5, 1996 he filed an occupational disease claim alleging that he sustained hallux rigidus of his left great toe due to his job duties. The Office accepted

that appellant sustained tarsal tunnel syndrome of his left ankle and "hallux rigidus of his left foot aggravated by his employment" and paid appropriate compensation.[1]

Appellant filed a claim for a schedule award in 1996 alleging that he sustained permanent impairment of his left leg due to his accepted employment injuries. On February 21, 1997 Dr. Siegel described appellant's left ankle and great toe impairment. On March 18, 1997 an Office medical adviser reviewed Dr. Siegel's findings and determined that appellant had a 14 percent permanent impairment of his left leg due to limited motion and sensory loss of the left ankle and great toe under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). In an April 1, 1997 award of compensation, the Office granted appellant a schedule award for a 14 percent permanent impairment of his left leg.[2]

On June 20, 1997 appellant filed an occupational disease claim alleging that he sustained a knot on the side of his right great toe due to his job duties. The Office accepted that he sustained a bone spur of his right toe.[3] On January 20, 1998 appellant underwent an exostectomy of the right great toe which was authorized by the Office. He filed a schedule award claim alleging that he sustained permanent impairment of his right leg.

On September 29, 1998 Dr. Siegel provided a description of appellant's lower extremity conditions. He reported range of motion findings for appellant's ankles and great toe and discussed his pain and numbness in both great toes and his numbness in the other toes of his left foot. On December 29, 1998 an Office medical adviser concluded that Dr. Siegel's findings showed that appellant had a 22 percent permanent impairment of his left leg and a 15 percent permanent impairment of his right leg.[4] In a January 11, 1999 award of compensation, the Office granted appellant a schedule award for an additional 8 percent permanent impairment of his left leg and a 15 percent permanent impairment of his right leg.[5]

On February 24, 2006 Dr. Siegel stated that appellant reported that he had numbness in his left foot, particularly in the left toes, and pain about the left ankle which were present even at rest but increased with activity. He indicated that on examination appellant exhibited a stocking distribution of hypalgesia, hypesthesia (including light touch) as well as temperature sense on the left. Dr. Siegel stated that he had decreased vibratory sense on the left as well as decreased

[1] On September 6, 1995 Irwin M. Siegel, an attending Board-certified neurosurgeon, performed a surgical excision of osteocartilaginous matter in appellant's left subtarsal tunnel, decompression of his left tarsal tunnel, and neurolysis of his left tibial and plantar nerves. On October 7, 1996 Dr. Siegel performed an arthrotomy, with marginal exostectomy, of the left metatarsophalangeal joint of the left great toe. These surgeries were authorized by the Office.

[2] On April 11, 1997 Dr. Siegel indicated that appellant had more than a 14 percent impairment of his left leg but he did not provide a new calculation of appellant's impairment.

[3] All of appellant's occupational disease claims have been combined into the present case record.

[4] The Office medical adviser indicated that the numbness of appellant's left toes was related to his left superficial peroneal nerve and his medial/lateral plantar nerves.

[5] The Office later accepted that appellant also sustained bilateral corns and callosities on his feet.

proprioception bilaterally. He reported findings for various motions of appellant's great toes, ankles and hindfeet.[6]

On October 27, 2006 Dr. Benjamin P. Crane, a Board-certified orthopedic surgeon who served as an Office medical adviser, reviewed the February 2006 findings of Dr. Siegel and concluded that appellant had a 29 percent permanent impairment of his left leg and a 12 percent permanent impairment of his right leg. For appellant's left leg, he determined that he had a seven percent impairment due to limited motion of his left great toe which was comprised of a five percent impairment due to five degrees of great toe plantar flexion and a two percent impairment due to five degrees of great toe dorsiflexion. Dr. Crane found that appellant had a 15 percent impairment due to limited motion of his left ankle which was comprised of a 15 percent impairment due to 10 degrees of ankle plantar flexion.[7] He indicated that appellant had a seven percent impairment due to limited motion of his left hindfoot which was comprised of a five percent impairment due to 5 degrees of hindfoot inversion and a two percent impairment due to 10 degrees of hindfoot eversion. Dr. Crane found that appellant had a three percent impairment for Grade 4 pain in his left sural nerve according to Table 16-10 and 16-15 of the A.M.A., *Guides* and indicated that he used the Combined Values Chart of the A.M.A., *Guides* to combine this impairment rating with the ratings for limited left great toe, ankle and hindfoot motion. He concluded that appellant had a 29 percent impairment of his left leg.

For appellant's right leg, Dr. Crane determined that he had a seven percent impairment due to limited motion of his right great toe which was comprised of a five percent impairment due to five degrees of great toe plantar flexion and a two percent impairment due to five degrees of great toe dorsiflexion. He found that appellant had a seven percent impairment due to limited motion of his right ankle which was comprised of a seven percent impairment due to 15 degrees of ankle plantar flexion.[8] Dr. Crane indicated that appellant had a two percent impairment due to limited motion of his right hindfoot which was comprised of a two percent impairment due to 10 degrees of hindfoot inversion.[9] He found that appellant had a 1 percent impairment for Grade 4 pain in his right surreal nerve according to Table 16-10 and 16-15 of the A.M.A., *Guides* and indicated that he used the Combined Values Chart of the A.M.A., *Guides* to combine this impairment rating with the ratings for limited right great toe, ankle and hindfoot motion. Dr. Crane concluded that appellant had a 12 percent impairment of his right leg.

In a March 1, 2007 award of compensation, the Office granted appellant a schedule award for an additional one percent permanent impairment of his left leg. The award ran for 2.88 weeks from January 6 to 26, 2000. The Office stated that appellant had already received schedule awards for a 28 percent permanent impairment of his left leg and a 21 percent permanent impairment of his right leg.

[6] Dr. Siegel indicated that the range of motion of appellant's other toes was normal.

[7] Dr. Crane indicated that appellant's 20 degrees of left ankle dorsiflexion did not warrant an impairment rating.

[8] Dr. Crane indicated that appellant's 30 degrees of right ankle dorsiflexion did not warrant an impairment rating.

[9] Dr. Crane indicated that appellant's 15 degrees of right hindfoot eversion did not warrant an impairment rating.

LEGAL PRECEDENT

The schedule award provision of the Act[10] and its implementing regulation[11] set 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.[12] 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.[13]

ANALYSIS

The Office based its March 1, 2007 schedule award on an October 27, 2006 evaluation by Dr. Crane, a Board-certified orthopedic surgeon who served as an Office medical adviser, in which it was determined that appellant had a 29 percent permanent impairment of his left leg and a 12 percent permanent impairment of his right leg. Dr. Crane based his impairment calculations on February 2006 findings of Dr. Siegel, an attending Board-certified neurosurgeon.

In concluding that appellant had a 29 percent impairment of his left leg, Dr. Crane properly determined that appellant had a 7 percent impairment due to limited motion of his left great toe.[14] He correctly found that appellant had a 15 percent impairment due to 10 degrees of left ankle plantar flexion and a 7 percent impairment due to limited motion of his left hindfoot which was comprised of a 5 percent impairment due to 5 degrees of hindfoot inversion and a 2 percent impairment due to 10 degrees of hindfoot eversion.[15]

Dr. Crane also found that appellant had a three percent impairment for Grade 4 pain in his left sural nerve according to Tables 16-10 and 16-15 of the A.M.A., *Guides*.[16] However, the Board notes that Table 16-15 does not identify the sural nerve as one of the nerves to evaluate for

[10] 5 U.S.C. § 8107.

[11] 20 C.F.R. § 10.404 (1999).

[12] *Id*.

[13] *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[14] *See* A.M.A., *Guides* 537, Table 17-14. Dr. Crane inadvertently indicated that appellant had a five percent impairment due to five degrees of great toe plantar flexion and a two percent impairment due to five degrees of great toe dorsiflexion, when it fact he had a two percent impairment due to five degrees of great toe plantar flexion and a five percent impairment due to five degrees of great toe dorsiflexion. In both instances, the total impairment is seven percent.

[15] *See* A.M.A., *Guides* 537, Tables 17-11, 17-12.

[16] *Id.* at 482, 492, Tables 16-10, 16-15.

sensory loss and it remains unclear how Dr. Crane applied Table 16-15 to find the maximum sensory loss for the appropriate nerve involved. Moreover, Table 16-10 provides that a Grade 4 for pain or sensory loss can range from 1 to 25 percent and Dr. Crane did not indicate the level of Grade 4 pain that appellant experienced.

In concluding that appellant had a 12 percent impairment of his right leg, Dr. Crane properly determined that appellant had a 7 percent impairment due to limited motion of his right great toe.[17] He correctly found that appellant had a seven percent impairment due to 15 degrees of right ankle plantar flexion and a two percent impairment due to 10 degrees of right hindfoot inversion.[18] Dr. Crane found that appellant had a one percent impairment for Grade 4 pain in his right surreal nerve according to Tables 16-10 and 16-15 of the A.M.A., *Guides.* However, he again failed to adequately explain how he applied Tables 16-10 and 16-15 for the reasons noted above. Such explanation is especially necessary because Dr. Crane identified Grade 4 pain in both legs but found a three percent sensory loss on the left and a one percent sensory loss on the right. Moreover, he stated that using the Combined Values Chart of the A.M.A., *Guides* to combine appellant's 1 percent sensory loss on the right with the ratings for limited right great toe, ankle and hindfoot motion equaled a 12 percent impairment of his right leg. However, use of the Combined Values Chart to combine these figures actually yields a 17 percent impairment of appellant's right leg.[19]

The Board further notes that the Office indicated in its March 1, 2007 award of compensation that appellant had already received, prior to March 1, 2007, schedule awards for a 28 percent permanent impairment of his left leg and a 21 percent permanent impairment of his right leg. However, a review of the record suggests that, prior to March 1, 2007, appellant had only received schedule awards for a 22 percent permanent impairment of his left leg and a 15 percent permanent impairment of his right leg. As noted above, the Office shares in the burden of developing evidence.[20] Given the matters described above, the case should be remanded to the Office for clarification of these matters. After such development as it deems necessary, the Office should issue an appropriate decision regarding appellant's entitlement to schedule award compensation.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant is entitled to additional schedule award compensation for permanent impairment of his legs. The case is remanded to the Office for further development.

[17] *Id.* at 537, Table 17-14. Dr. Crane again reversed the impairment ratings for great toe plantar flexion and dorsiflexion but this reversal did not affect the total rating for the great toe.

[18] *Id.* at 537, Tables 17-11, 17-12.

[19] *Id.* at 604-05, Combined Values Chart.

[20] *See supra* note 13 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 1, 2007 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: October 12, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board