

**United States Department of Labor
Employees' Compensation Appeals Board**

M.T., Appellant

and

**DEPARTMENT OF THE ARMY, CORPS OF
ENGINEERS, Omaha, NE, Employer**

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**Docket No. 07-1982
Issued: February 11, 2008**

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

JURISDICTION

On July 24, 2007 appellant filed a timely appeal from the December 7, 2006 and April 6, 2007 merit decisions of the Office of Workers' Compensation Programs granting a schedule award. 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 an 11 percent permanent impairment of the left lower extremity for which he received schedule awards.

FACTUAL HISTORY

This case is before the Board for the third time. In the first appeal, the Board affirmed a December 3, 1998 decision finding that appellant had no disability after September 16, 1996 due

to his September 15, 1995 employment injury.¹ In the second appeal, the Board affirmed a May 11, 1999 decision finding that he failed to establish a recurrence of disability on September 15, 1995.² The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

In a decision dated April 15, 2005, the Office found that appellant failed to establish a recurrence of disability due to his accepted employment injury. On October 5, 2005 an Office hearing representative vacated the April 15, 2005 decision and remanded the case for a determination of whether his ongoing left lower extremity condition was caused or aggravated by the September 15, 1995 employment injury.

On December 8, 2005 the Office referred appellant to Dr. Niranjana R. Chandragiri, a Board-certified neurologist, for a second opinion examination. In a report dated February 8, 2006, Dr. Chandragiri reviewed his history of injury and discussed his current complaints of altered sensation, fatigue and problems with movement of the left leg below the knee. He noted that appellant had a loss of one centimeter circumference of the midcalf and thigh on the left side with “no focal wasting.” Dr. Chandragiri found inconsistent muscle weakness and intermittent effort on neurological examination and a loss of sensation in the left lower extremity. He opined that appellant’s “neurological examination today shows no deficit[;] sensory abnormalities appear to be functional (psychological) in nature. There [is] no indication of saphenous nerve injury[;] there [is] no evidence of peripheral neuropathy.”

On February 14, 2006 the Office referred appellant to Dr. Salaheddine Tomeh, a Board-certified surgeon, for a second opinion examination. In a report dated March 16, 2006, Dr. Tomeh diagnosed venous insufficiency and saphenous nerve neuropathy due to appellant’s September 15, 1995 employment injury and a history of a pulmonary embolism due to the venous insufficiency. On examination of the lower extremity, he found no evidence of chronic vascular insufficiency, varicosities, skin alterations, swelling in the left ankle, edema, pigmentation or ulceration. Dr. Tomeh measured equal ankle circumference and the right calf circumference as 40.7 centimeters and the left calf circumference as 40.0 centimeters. He found “definite tenderness along the medial aspect of the left calf” and left knee tenderness with no mass, swelling, crepitation or instability. Dr. Tomeh indicated that appellant had equal muscle strength when distracted and an inconsistent sensory examination.

On April 12, 2006 the Office accepted that appellant sustained a recurrence of disability due to his September 15, 1995 employment injury. The Office accepted venous insufficiency and a pulmonary embolism as a consequence of his September 15, 1995 employment injury.

¹ Docket No. 99-1494 (issued December 11, 2000). The Office accepted that appellant sustained a left leg contusion, pes anserine bursitis, a left knee medial meniscal tear, thrombophlebitis and a saphenous nerve injury due to a September 15, 1995 work injury. On May 20, 1996 he underwent arthroscopic surgery of the left knee to repair a chondral fracture. Appellant did not have a meniscal tear. The Office granted him a schedule award for a four percent permanent impairment of the left lower extremity. The Office also accepted appellant’s claim for major depressive disorder and anxiety disorder under file number 131016216 and paid him compensation beginning September 1996.

² Docket No. 99-2079 (issued December 13, 2001).

On July 20, 2006 appellant requested a schedule award. On August 29, 2006 an Office medical adviser noted that appellant previously received an award for a four percent impairment of the left lower extremity due to an impairment of the saphenous nerve. He reviewed the medical evidence, including the reports of Dr. Chandragiri and Dr. Tomeh, and found that appellant had a Grade 2, or 80 percent, impairment of the saphenous nerve due to neuropathy according to Table 16-10 on page 482 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, 5th ed. 2001 (A.M.A., *Guides*). The Office medical adviser noted that the maximum impairment of the saphenous, or femoral nerve, was seven percent. He multiplied the graded 80 percent deficit by the maximum 7 percent impairment of the femoral nerve to find a 5.6 percent lower extremity impairment, which he rounded to 6 percent.³ The Office medical adviser further found that appellant had a class 1, or 5 percent, impairment of the lower extremity due to peripheral vascular nerve disease.⁴ The Office medical adviser combined the 6 percent impairment of the saphenous nerve with the 5 percent impairment for peripheral vascular disease to find an 11 percent left lower extremity impairment.

By decision dated December 7, 2006, the Office granted appellant a schedule award for an additional seven percent impairment of the left lower extremity. The period of the award ran for 20.16 weeks from March 16 to August 4, 2006.

On December 12, 2006 appellant requested a review of the written record. In a December 25, 2006 letter to the hearing representative, he alleged that the Office had mishandled his medical treatment. In a letter dated March 8, 2007, appellant argued that he had a 60 percent lower extremity impairment due to vascular disease according to Chapter 4 of the A.M.A., *Guides* relevant to the cardiovascular system. He also contended that he had an additional impairment for anticoagulant treatment

By decision dated April 6, 2007, an Office hearing representative affirmed the December 7, 2006 schedule award determination.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act,⁵ and its implementing federal regulations,⁶ 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 for all claimants, the Office has adopted the A.M.A., *Guides* (5th ed. 2001) as the uniform standard

³ A.M.A., *Guides* 552, Table 17-37.

⁴ *Id.* at 554, Table 17-38.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

applicable to all claimants.⁷ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁸

ANALYSIS

The Office accepted a left leg contusion, pes anserine bursitis, a left knee medial meniscal tear, thrombophlebitis and a saphenous nerve injury due to a September 15, 1995 employment injury. The Office also accepted that appellant sustained venous insufficiency and a pulmonary embolism as a consequence of his work injury.

On July 20, 2006 appellant requested a schedule award. An Office medical adviser reviewed the medical evidence on August 29, 2006 and applied the tables and pages of the A.M.A., *Guides* to the physical findings of Dr. Chandragiri and Dr. Tomeh. He noted that appellant had previously received an award for a four percent impairment of the left lower extremity due to an impairment of the saphenous nerve and discussed his history of arthroscopic surgery to repair a chondral fracture. The Office medical adviser found that the maximum impairment of the saphenous, or femoral nerve, was seven percent for dysethesia.⁹ He graded appellant's impairment of the saphenous nerve to neuropathy as Grade 2, or 80 percent.¹⁰ The Office medical adviser multiplied the 7 percent maximum impairment of the saphenous, or femoral nerve, by the graded 80 percent impairment to find a 5.6 percent lower extremity impairment, which he rounded to 6 percent. He then determined that appellant had a class 1, or 5 percent, impairment of the lower extremity due to peripheral vascular nerve disease.¹¹ The Office medical adviser combined the 6 percent impairment of the saphenous nerve with the 5 percent impairment for peripheral vascular disease to find a total left lower extremity impairment of 11 percent. The Board finds that the opinion of the Office medical adviser is in accordance with the A.M.A., *Guides* and constitutes the weight of the medical evidence. Appellant has not submitted probative medical evidence showing more than an 11 percent impairment of the left lower extremity.

On appeal appellant submitted a statement regarding the Office's nurse intervention program. The Board's jurisdiction, however, is limited to the review of final Office decisions under the Act.¹²

CONCLUSION

The Board finds that appellant has no more than an 11 percent left lower extremity impairment for which he received schedule awards.

⁷ 20 C.F.R. § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁹ A.M.A., *Guides* 552, Table 17-37.

¹⁰ *Id.* at 482, Table 16-10.

¹¹ *Id.* at 554, Table 17-38.

¹² See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 6, 2007 and December 7, 2006 are affirmed.

Issued: February 11, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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