

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

C.T., Appellant)

and)

DEPARTMENT OF THE NAVY, MARINE)
CORPS LOGISTICS BASE, Barstow, CA,)
Employer)

**Docket No. 07-1948
Issued: January 9, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 12, 2007 appellant timely appealed a July 6, 2007 merit decision of the Office of Workers' Compensation Programs, concerning a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the schedule award.

ISSUE

The issue is whether appellant has more than one percent impairment of the left lower extremity.

FACTUAL HISTORY

Appellant, a 57-year-old heavy mobile equipment mechanic leader, injured his left foot on December 9, 2002 when he kicked open a stuck door. On January 25, 2003 the Office accepted the claim for multiple left foot fractures. On December 31, 2002 appellant underwent an open reduction and internal fixation of left second and third metatarsal shaft fractures. He returned to full duty effective April 14, 2003.

On November 25, 2005 appellant filed a claim for a schedule award. In a March 6, 2006 letter, the Office contacted Dr. Samuel Rice, an orthopedic surgeon and treating physician. He was requested to examine appellant and provide information as to any permanent impairment. No response was received. On October 2, 2006 the Office referred appellant for evaluation by Dr. Bunsri Sophon, a Board-certified orthopedic surgeon, who examined appellant on October 20, 2006.

The Office referred the record, including Dr. Sophon's October 20, 2006 report, to a medical adviser for a determination of whether appellant had an employment-related permanent impairment. In a report dated February 5, 2007, the Office medical adviser found that appellant had a one percent permanent impairment of the left lower extremity. Based on Dr. Sophon's recent examination findings, the medical adviser noted that there was full and symmetric range of motion of appellant's ankle and toes. The medical adviser found that appellant had a Grade 4 pain/decreased sensation that is forgotten with activity resulting in a one percent impairment of the left lower extremity.

By decision dated February 20, 2007, the Office granted a schedule award for one percent impairment of the left lower extremity. The award covered a period of 2.88 weeks from October 20 to November 9, 2006.

On March 16, 2007 appellant requested reconsideration and submitted a July 25, 2005 report from Dr. Rice, who obtained range of motion measurements, finding there to be a loss of range of motion of the toes. A March 14, 2007 progress report from Dr. Rice was also received by the Office.

On April 11, 2007 the Office denied modification of the February 20, 2007 schedule award on the grounds that the new evidence did not provide a date of maximum medical improvement or provide a percentage of permanent impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

The Office advised appellant to submit a medical rating from his doctor based on the A.M.A., *Guides* fifth edition with a date of maximum medical improvement along with a new CA-7 claim for any additional schedule award. On April 24, 2007 appellant requested reconsideration and submitted a claim for compensation. Appellant also submitted progress reports dated May 7 and 21 and June 6, 2007 from Dr. Rice.

On July 6, 2007 the Office denied modification of the April 11, 2007 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act set forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.¹ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal

¹ For a total loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2) (2000).

justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.² Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).³

ANALYSIS

The Office medical adviser reviewed Dr. Sophon's October 20, 2006 examination findings and properly applied those findings to the A.M.A., *Guides*. The Office medical adviser rated appellant's impairment due to pain as Grade 4. Under Table 16-10, a Grade 4 classification is characterized by "[d]istorted superficial tactile sensibility (diminished light touch), with or without minimal abnormal sensations or pain, that is forgotten during activity."⁴ This classification represents a 1 to 25 percent sensory deficit.⁵ The medical adviser identified the injured nerve as the lateral plantar nerve, for which a maximum of five percent impairment is attributed. The impairment for sensory deficit was obtained by multiplying the Grade 4 sensory deficit (20 percent) by the maximum impairment for sensory loss attributable to the lateral plantar nerve (5 percent) under Table 17-37, A.M.A., *Guides* 552. This equals one percent.

The one percent impairment rating provided by the Office medical adviser on February 5, 2007 is consistent with Dr. Sophon's examination findings and conforms to the A.M.A., *Guides* (5th ed. 2001). The Office medical adviser's impairment rating constitutes the weight of the medical evidence.⁶

Appellant submitted additional reports from Dr. Rice with his reconsideration requests. These reports are insufficient to establish that appellant had a greater than one percent impairment rating. Dr. Rice did not use the A.M.A., *Guides* in his evaluation nor did he provide a maximum medical improvement date or an impairment percentage. His 2005 report predates the October 20, 2006 evaluation used to calculate the impairment by more than a year. Dr. Rice found that appellant sustained a loss of range of motion. However, this finding does not preclude the finding that appellant had a full range of motion on October 20, 2006 when evaluated by Dr. Sophon. The other progress notes from Dr. Rice did not address the issue of appellant's impairment rating.

CONCLUSION

Appellant has not demonstrated that he has greater than one percent impairment of the left lower extremity.

² 20 C.F.R. § 10.404 (2007).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁴ A.M.A., *Guides* 482, Table 16-10.

⁵ *Id.* Although Chapter 16 of the A.M.A., *Guides* pertains to upper extremity impairments, Table 16-10 is also applicable for determining the extent of lower extremity impairments due to sensory deficits. See Section 17.21, A.M.A., *Guides* 550.

⁶ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2008
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