



On July 20, 2005 appellant filed a claim for a schedule award. She submitted an undated report and a July 8, 2005 form report of Dr. Benjamin A. Lanza, an attending podiatrist, who stated that appellant sustained a stress fracture and contusion of the left heel. In the July 8, 2005 report, Dr. Lanza indicated with an affirmative mark that the diagnosed conditions were caused by the August 17, 2000 employment-related injury.

By letter dated August 5, 2005, the Office requested that Dr. Lanza determine whether appellant's employment-related contusion of the left foot had resolved. It also asked for an opinion as to whether appellant's left foot stress fracture was causally related to the August 17, 2000 employment injury.

In an August 16, 2005 letter, the Office requested that Dr. Lanza determine whether appellant sustained any permanent impairment of her left lower extremity based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001) and the date she reached maximum medical improvement.

Dr. Lanza submitted a February 18, 2004 report which reiterated his opinion that appellant sustained a work-related contusion and stress fracture of the left heel. He opined that she had 30 percent impairment of the left foot due to the August 17, 2000 employment injury. Dr. Lanza stated that this impairment rating was based on the number of breaks/interruptions utilized by appellant to modify her work day including, rearrangement of her schedule and general change of habits to accomplish a full day workload. He noted that overall improvement of her foot pain had been slow but steady. Dr. Lanza stated that she had stabilized. He related that appellant could safely perform her work duties and adapt to pain with the help of shoes, inserts and management of her time and activity to avoid overuse of her foot.

In an August 16, 2005 report, Dr. Lanza explained that appellant's stress fracture of the left foot was caused by the August 17, 2000 employment injury because she sustained damage to this area. He also related that clinical examination at the time of the injury revealed inflammation, pain, swelling and loss of function due to the accepted employment injury.

In an October 20, 2005 report, Dr. Lanza stated that appellant reached maximum medical improvement in August 2005. She had permanent residuals which included pain with loss of range of motion and extended use of the left lower extremity. On physical examination, Dr. Lanza reported normal muscle strength and function. Range of motion of the ankle, subtalar joint and remaining pedal structures were essentially normal. There was no obvious deformity including skin loss and muscle or tendon damage with the exception of pain on range of motion. Dr. Lanza stated that appellant winced and grimaced throughout the examination when these structures were manipulated. She had pain in the plantar heel which radiated to her ankle and distally to the subtalar joint and other foot structures when she worked her usual shift. Dr. Lanza found that appellant had no fixed deformity as a result of any malunion or ankylosis. She had essentially normal bilateral alignment and range of motion but experienced pain on the left. Dr. Lanza reiterated that appellant sustained a 30 percent impairment of the left foot. On October 20, 2005 he reported that appellant could dorsiflex to 88 degrees and plantar flex to 135 degrees. Dr. Lanza stated that appellant could invert from neutral to 14 degrees and evert from 11 degrees of eversion. He further stated that ankylosis was not applicable. Dr. Lanza advised that her 30 percent impairment rating was due to pain.

On December 6, 2005 Dr. G.M. Pwadas, an Office medical adviser, reviewed appellant's medical record. He noted that she sustained a contusion of the left foot on August 17, 2000. Dr. Pwadas related that a May 16, 2001 magnetic resonance imaging (MRI) scan ruled out a stress fracture. He reviewed Dr. Lanza's July 8, 2005 findings and opined that appellant had no impairment to her left lower extremity.

By decision dated February 7, 2006, the Office denied appellant's claim for a schedule award.

On September 18 and October 10, 2006 appellant requested reconsideration. In reports dated July 12 and September 26, 2006, Dr. Lanza reiterated his diagnosis and impairment rating.

In a December 15, 2006 decision, the Office denied modification of the February 7, 2006 decision.

On March 7, 2007 appellant filed a claim alleging that she sustained a recurrence of total disability on September 16, 2006. She returned to work with restrictions on September 27, 2006. Appellant submitted a January 26, 2007 report from Dr. Robin Daum-Kowalski, a Board-certified radiologist. Dr. Daum-Kowalski noted that a recent MRI scan of appellant's left ankle demonstrated prior tears of the anterior tibiofibular and talofibular ligaments and a small cyst that was likely arthritic at the lateral talus. In a January 5, 2007 report, Dr. James F. Bethea, a Board-certified orthopedic surgeon, provided essentially normal findings on physical and x-ray examination of appellant's left ankle and right knee with the exception of tenderness in the left ankle. He diagnosed nonspecific tenosynovitis of the left ankle and right knee pain. Dr. Bethea also reviewed the MRI scan results. On March 9, 2007 Dr. Lanza reiterated his prior opinion that appellant sustained a contusion of the left ankle.

By letter dated March 29, 2007, the Office advised appellant that the evidence submitted was insufficient to establish her recurrence of total disability claim. It requested additional medical evidence.

On March 30, 2007 appellant requested reconsideration of the Office's December 15, 2006 decision.

On March 9, 2007 Dr. Bethea noted a history of pain in the right knee following arthroscopic surgery in 2000 and tenderness in the left ankle, although it had full range of motion. In an April 4, 2007 report, Dr. Bethea opined that appellant's prior tears of the anterior tibiofibular and talofibular ligaments were causally related to the August 2000 employment injury.

On May 4, 2007 Dr. James W. Dyer, an Office medical adviser, reviewed a history of appellant's August 17, 2000 employment injury and medical treatment. He stated that the 2001 MRI scan did not reveal any significant pathology. Dr. Dyer related that appellant's old left ankle injury with prior tears of ligaments was not part of the accepted employment-related condition. He further related that her medical examination on March 9, 2007 revealed a full range of motion of the left ankle and hind foot. Dr. Dyer concluded that there was no basis for a schedule award and that appellant had no impairment of the left lower extremity.

By decision dated May 8, 2007, the Office denied modification of the December 15, 2006 decision. It accorded determinative weight to Dr. Dyer's May 4, 2007 opinion.

In a May 30, 2007 decision, the Office denied appellant's recurrence of disability claim. It found the medical evidence of record insufficient to establish that she sustained a disability on September 16, 2006 causally related to her accepted employment-related injury.

On June 26, 2007 appellant requested an oral hearing before an Office hearing representative. She submitted Dr. Lanza's reports dated April 18 through November 11, 2007. Dr. Lanza stated that appellant sustained a ligament tear and plantar fasciitis of the left heel. In an August 18, 2000 report, Dr. Kaushal K. Sinha, an orthopedic surgeon, noted appellant's complaint of left ankle pain following the August 17, 2000 employment injury. She recommended further diagnostic testing.

By decision dated February 12, 2008, an Office hearing representative affirmed the May 30, 2007 decision. She found the evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to her accepted August 17, 2000 employment injury.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.<sup>3</sup> However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>4</sup>

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the protocols of the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment. In such cases, the Office may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.<sup>5</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *See John L. McClanic*, 48 ECAB 552 (1997); *see also Paul R. Evans*, 44 ECAB 646, 651 (1993).

## ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a contusion of the left heel on August 17, 2000. Appellant contends that she is entitled to a schedule award for permanent impairment of her left foot. The weight of medical evidence, however, does not establish any permanent impairment of her left foot.

Dr. Lanza, an attending physician, stated that appellant sustained a contusion and stress fracture of the left heel that were causally related to her August 17, 2000 employment injury. He determined that she reached maximum medical improvement in August 2005. Dr. Lanza opined that appellant sustained a 30 percent impairment of the left foot due to pain caused by the accepted employment injury. He based his impairment rating on the number of breaks/interruptions utilized by appellant to modify her workday including, rearrangement of her schedule and general change of habits to accomplish a full day workload. Dr. Lanza noted that overall improvement of her foot pain had been slow but steady. He stated that she had stabilized. The Board notes, however, that Dr. Lanza did not derive his impairment estimate based on the A.M.A., *Guides*.

Dr. Lanza's October 20, 2005 report provided findings on physical examination. He stated that muscle strength and function were normal. Dr. Lanza noted essentially normal range of motion of the ankle, subtalar joint and remaining pedal structures. He reported 88 degrees of dorsiflexion and 135 degrees of plantar flexion. Dr. Lanza further reported 14 degrees of inversion and 11 degrees of eversion. He stated that ankylosis was not applicable. Dr. Lanza stated that there was no obvious deformity including skin loss and muscle or tendon damage with the exception of pain on range of motion. He related that appellant winced and grimaced throughout the examination when these structures were manipulated. She related that she experienced significant pain in the plantar heel which radiated to her ankle and distally to the subtalar joint and other foot structures when she worked her usual shift. The Board notes that the Office has not accepted appellant's claim for a stress fracture of the left heel. Moreover, Dr. Lanza did not provide an impairment rating based on the A.M.A., *Guides*. Therefore, his impairment estimate is of diminished probative value and insufficient to establish that she sustained any permanent impairment of the left heel.

Dr. Pwadas, an Office medical adviser, stated that appellant sustained a contusion of the left foot on August 17, 2000 and that a May 16, 2001 MRI scan, ruled out a stress fracture. Dr. Pwadas noted Dr. Lanza's July 8, 2005 normal findings. Dr. Pwadas found no objective basis for an impairment rating for the left heel under the A.M.A., *Guides*. He opined that appellant did not have any impairment of the left heel.

Similarly, Dr. Dyer, an Office medical adviser, found no objective basis for an impairment rating for the left lower extremity under the A.M.A., *Guides*. He reviewed the medical record and stated that the 2001 MRI scan did not reveal any significant pathology. Dr. Dyer stated that appellant's old left ankle injury with prior tears of the ligaments was based on the accepted employment-related condition. He noted Dr. Lanza's March 9, 2007 findings of full range of motion of the left ankle and hind foot.

Dr. Pwadas and Dr. Dyer provided sufficient medical rationale in determining that appellant does not have any impairment of her left heel. The Board finds that the opinions of Dr. Pwadas and Dr. Dyer represent the weight of the medical evidence of record. Appellant is not entitled to a schedule award for her left foot.

### **LEGAL PRECEDENT -- ISSUE 2**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>6</sup> This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>7</sup>

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.<sup>8</sup>

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

The Office accepted that appellant sustained a contusion of the left heel on August 17, 2000. Following this injury, she returned to limited-duty work. Appellant claimed a recurrence of total disability on September 16, 2006 causally related to her accepted employment injury. She must demonstrate either that her condition has changed such that she could not perform the activities required by her modified job or that the requirements of the limited-duty job changed or were withdrawn. The Board finds that the record contains no evidence that her limited-duty job requirements changed or were withdrawn or that her accepted condition changed to the point that it precluded her from limited-duty work.

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<sup>6</sup> 20 C.F.R. § 10.5(x).

<sup>7</sup> *Id.*

<sup>8</sup> *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>9</sup> *James H. Botts*, 50 ECAB 265 (1999).

Dr. Daum-Kowalski's January 26, 2007 MRI scan report of appellant's left ankle noted prior tears of the anterior tibiofibular and talofibular ligaments and a small cyst that was likely arthritic at the lateral talus. Dr. Bethea's January 5, 2007 report provided essentially normal findings on physical and x-ray examination. He stated that appellant sustained nonspecific tenosynovitis of the left ankle and right knee pain. Dr. Lanza's reports concurred that appellant sustained a ligament tear, contusion, stress fracture and plantar fasciitis of the left heel. Dr. Sinha's August 18, 2000 report noted appellant's complaints of left ankle pain and recommended further testing. None of the physicians, however, provided any opinion noting disability for work on or after September 16, 2006. There is no medical evidence addressing the causal relationship between appellant's accepted employment injury and her disability as of that date.<sup>10</sup> The Board finds that the medical evidence is insufficient to establish her claim.

On April 4, 2007 Dr. Bethea noted the prior tears of the anterior tibiofibular and talofibular ligaments based on a January 29, 2007 MRI scan. He did not provide any opinion addressing disability or the causal relationship to her accepted employment injury as of September 16, 2006.<sup>11</sup> Further, Dr. Bethea did not explain how the diagnosed conditions were causally related to appellant's accepted employment injury. The Board has held that medical reports not supported by medical rationale are of limited probative value.<sup>12</sup>

Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the limited-duty requirements which would prohibit her from performing the limited-duty position she assumed after she returned to work.

### CONCLUSION

The Board finds that appellant is not entitled to a schedule award for her left foot. The Board further finds that appellant has failed to establish that she sustained a recurrence of total disability on September 16, 2006 causally related to her accepted employment-related injury.

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<sup>10</sup> See *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

<sup>11</sup> *Id.*

<sup>12</sup> *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 12, 2008 and May 8, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 25, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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