

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

S.H., Appellant)
and) Docket No. 09-216
U.S. POSTAL SERVICE, POST OFFICE,) Issued: July 23, 2009
Addison, TX, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 28, 2008 appellant filed a timely appeal from a July 29, 2008 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the schedule award claim.

ISSUE

The issue is whether appellant has established more than four percent right lower extremity impairment, for which she received a schedule award.

FACTUAL HISTORY

On March 23, 2005 appellant, a 41-year-old letter carrier, twisted her right foot when she stepped off of a curb. She stopped working on March 24, 2005. The Office accepted appellant's claim for sprain/strain of the right foot and ankle and right ankle joint derangement. Appellant was released to work four hours a day on October 5, 2005 and returned to full-time modified duty on January 28, 2006. Following a work hardening program and functional capacity

evaluation on February 7, 2007, she was released to work eight hours per day with no restrictions on March 24, 2007.

On January 28, 2008 appellant filed a claim for a schedule award. In a September 18, 2007 report, Dr. William Dodge, a Board-certified family practitioner, advised that she reached maximum medical improvement on September 18, 2007. He provided an impairment rating using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).¹ Dr. Dodge found that appellant had a 17 percent right lower extremity impairment based on Grade 4 strength loss in plantar flexion under Tables 17-7 and 17-8 page 531 and 532. Although appellant had 0.5 centimeter (cm) muscle atrophy at the calf, under Table 17-6 page 530, it fell into the 0 to 0.9 cm category and resulted in no percent lower extremity impairment. Under Table 17-11 and 17-12 page 537, her abnormal motion of the right ankle and hindfoot were consistent with one percent impairment for inversion and one percent impairment for eversion; however, Dr. Dodge excluded that method of evaluation as it could not be combined with the muscle strength rating under Table 17-2, page 526. Dr. Dodge concluded that appellant had 17 percent impairment for her right foot and ankle injury.

In a September 26, 2007 progress note, Dr. Michael M. Taba, an orthopedic surgeon, noted that appellant had some occasional pain with certain activities, mostly on the lateral side of the sinus tarsi area. He stated that her ankle had good range of motion and she was nontender to palpation medially. Dr. Taba also stated that appellant's motor and sensory examinations were intact and her gait was normal. He recommended that she continue with her home exercise program and use an ankle brace.

On March 5, 2008 an Office medical adviser reviewed the medical record and recommended a second opinion examination. Although Dr. Dodge recommended 17 percent impairment for the right lower extremity based on strength loss in plantar flexion, Dr. Taba had found that appellant's motor and sensory examination was intact and her gait normal on September 26, 2007.

In an April 3, 2008 report, Dr. Robert Holladay, a Board-certified orthopedic surgeon and Office referral physician, reviewed the medical evidence of record and statement of accepted facts. He opined that appellant had four percent lower extremity impairment. Dr. Holladay found that the right calf had a 0.5 cm atrophy. Under Table 17-11, page 537 of the A.M.A., *Guides*, he found that the right ankle dorsiflexion of 15 degrees and plantar flexion of 42 degrees resulted in zero percent impairment. Under Table 17-12, page 537, 20 degrees inversion and 10 degrees eversion were each two percent lower extremity impairment or a total four percent. Dr. Holladay found that, the sensory examination of the lower extremities was normal, there was no evidence of muscle weakness on examination and appellant was capable of walking without a significant limp. He advised that a goniometer was used to measure loss of range of motion, a tape measure was used to measure circumferences, a reflex hammer was used to measure reflexes and a pin wheel was used to measure sensory loss.² Dr. Holladay advised that the

¹ A.M.A., *Guides* (5th ed. 2001).

² A May 19, 2008 magnetic resonance imaging scan of the ankle found no evidence of a new or acute fracture and no pathologic enhancement following contrast.

17 percent rating of Dr. Dodge based on loss of strength was a poor choice for evaluating appellant's impairment as range of motion was a more objective basis for measuring impairment.

In a May 29, 2008 report, the Office medical adviser reviewed the medical evidence. He agreed with Dr. Holladay that appellant had four percent permanent impairment of the right leg based on loss of range of motion. He noted that she reached maximum medical improvement on April 3, 2008.

By decision dated July 29, 2008, the Office granted appellant a schedule award for four percent impairment to the right lower extremity. The award covered the period April 3 to June 22, 2008, a total 11.52 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ 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. The Act, however, 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 regulations as the appropriate standard for evaluating schedule losses.⁵

Section 8123(a) of the Act provide that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary of Labor shall appoint a third physician who shall make an examination.⁶ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁷

ANALYSIS

The Board finds that this case is not in posture for a decision.

The Office referred appellant to Dr. Holladay for the purposes of determining whether she had any impairment of the right lower extremity. On April 3, 2008 Dr. Holladay provided findings on physical examination and determined that she had four percent impairment to the

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.404.

⁵ *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁶ 5 U.S.C. § 8123(a).

⁷ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

right lower extremity based on loss of range of motion.⁸ The Board finds that this impairment rating is in conformance with the A.M.A., *Guides*. While Dr. Holladay noted that the right calf had a 0.5 cm atrophy, this is zero percent impairment under Table 17-6 page 530.⁹ Under Table 17-11, page 537 of the A.M.A., *Guides*, he properly found that right ankle dorsiflexion of 15 degrees and plantar flexion of 42 degrees resulted in zero percent impairment. Under Table 17-12, page 537, Dr. Holladay properly found that 20 degrees inversion equated and 10 degrees eversion each represented two percent lower extremity impairment. This totaled four percent right lower extremity impairment.

The September 18, 2007 impairment rating of Dr. Dodge is also in conformance with the A.M.A., *Guides*. He noted the history of injury, provided findings on physical examination and determined that appellant had 17 percent impairment to the right lower extremity based on Grade 4 strength loss in plantar flexion under Tables 17-7 and 17-8 page 531 and 532. Dr. Dodge also noted that appellant's 0.5 cm muscle atrophy at the calf resulted in no impairment under Table 17-6. While he found that appellant's abnormal motion of the right ankle and hindfoot were consistent with one percent impairment for inversion and one percent impairment for eversion under Table 17-11 and 17-12 page 537, he properly excluded that method of evaluation from the impairment rating as Table 17-2 page 526 prohibits it from being combined with a muscle strength evaluation.

The Board finds that there is a conflict in medical opinion between Dr. Holladay and Dr. Dodge regarding the impairment to appellant of her right lower extremity. Accordingly, the Office should refer her to an impartial medical specialist for a thorough physical examination and evaluation of her right lower extremity impairment. After such further development as it deems necessary, the Office should issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for a decision.

⁸ Dr. Holladay noted that the sensory examination of the lower extremities was normal, there was no evidence of muscle weakness on examination and appellant was capable of walking without a significant limp.

⁹ The Board notes that, under Table 17-6 page 530, this would result in a zero percent impairment.

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: July 23, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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