United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 09-25**
	)	**Issued: March 18, 2009**
U.S. POSTAL SERVICE, SCHUYLKILL STATION , Philadelphia, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 2, 2008 appellant filed a timely appeal from a September 23, 2008 decision of the Office of Workers' Compensation Programs adjudicating his schedule award claim. 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 21 percent permanent impairment of the left lower extremity for which he received a schedule award.

FACTUAL HISTORY

This is the second appeal in this case.[1] By decision dated March 16, 2006, the Board remanded the case for further development of the medical evidence. The facts of the previous Board decision are incorporated herein by reference.

On May 4, 2006 Dr. Morley Slutsky, a Board-certified specialist in preventive medicine and an Office medical adviser, stated that appellant had 15 percent impairment of the left lower extremity based on an April 6, 2005 report from Dr. George L. Rodriguez, a Board-certified physiatrist,[2] who calculated that appellant had 14 percent impairment for decreased range of motion, including 7 percent for 5 degrees of extension, 5 percent for 5 degrees of inversion and 2 percent for 0 degrees of eversion. He calculated 1 percent impairment for sensory deficit or pain based on Grade 4 deficit of the superficial peroneal nerve (10 percent for Grade 4, using Table 16-10 at page 482 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*) multiplied by the 5 percent maximum sensory deficit of the superficial peroneal nerve from Table 17-37 at page 552 equals 1 percent).

By decision dated May 16, 2007, the Office granted appellant a schedule award based on an additional three percent impairment of the left lower extremity, or 8.64 weeks,[3] from December 4, 2005 to February 2, 2006.

Appellant filed a claim for an additional schedule award.

In a March 20, 2008 report, Dr. Daisy A. Rodriguez, a Board-certified internist, stated that appellant's ankle pain was constant at 1 on a scale of 1 to 10 but, on a bad day, the pain could be rated as a nine. She provided findings on physical examination. Appellant had effusion in the dorsal aspect of his left foot and palpation of the Achilles tendon produced numbness throughout the entire spine. The surgical incision overlying the lateral malleolus was mildly tender to palpation. Two-point discrimination testing revealed diminished sensation. Appellant was unable to feel two-point discrimination to 15 millimeters in a swap of the lateral dorsum and plantar surface of the left foot from the anterior malleolar area to his small toe. Dr. Rodriguez stated that appellant had significant left lower extremity pain, sensory loss and loss of range of

[1] Docket No. 06-69 (issued March 16, 2006). On March 28, 2001 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim alleging that on March 22, 2001 he injured his left leg while delivering mail when he slipped on an uneven step and fell. The Office accepted his claim for a left distal tibial fracture. On March 23 and April 25, 2001 and January 28, 2002 appellant underwent left ankle surgery. On October 7, 2005 the Office granted him a schedule award for 34.56 weeks based on 12 percent impairment.

[2] *See* Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present). The April 6, 2005 report of Dr. Rodriguez was reviewed in the Board's March 16, 2006 decision.

[3] The Federal Employees' Compensation Act provides for 288 weeks of compensation for 100 percent loss or loss of use of a lower extremity. 5 U.S.C. § 8107(c)(2). Multiplying 288 weeks by 3 percent equals 8.64 weeks of compensation.

motion. She found no evidence of symptom magnification or nonphysiological complaints. Dr. Rodriguez calculated that appellant had 44 percent impairment of the left lower extremity. This included 21 percent for decreased range of motion, including 7 percent for 5 degrees of extension, 7 percent for 15 degrees of flexion, 5 percent for 10 degrees of inversion and 2 percent for 5 degrees of eversion according to Tables 17-11 and 17-12 at page 537 of the A.M.A., *Guides.* It included 8 percent for sensory nerve impairment of the superficial peroneal nerve based on 4 percent for Grade 2 sensory deficit and 4 percent for Grade 2 dyesthesias[4] sensation and Table 16-10 at page 482 and 17-37 at page 552 (80 percent for Grade 2 multiplied by 5 percent maximum impairment for the superficial peroneal nerve). The 44 percent impairment calculation also included 23 percent for Class 1 skin disfigurement based on Table 8-2 at page 178 and Table 17-3 at page 527.

On July 8, 2008 Dr. Slutsky calculated that appellant had 21 percent impairment of the left lower extremity based on Dr. Rodriguez' report, including 18 percent for decreased range of motion and 3 percent for sensory nerve deficit. He noted that 10 degrees of inversion equals two percent impairment according to Table 17-12 at page 537 of the A.M.A., *Guides*, not five percent as Dr. Rodriguez indicated. Therefore, appellant had 18 percent range of motion impairment of the left ankle, not 21 percent. Dr. Slutsky stated that Dr. Rodriguez' assignment of Grade 2 sensory deficit was not appropriate because she did not measure protective sensibility which is required for Grade 2 deficit. He assigned Grade 3 sensory impairment and calculated 3 percent impairment (60 percent for Grade 3 from Table 16-10 at page 484 multiplied by 5 percent maximum for the superficial peroneal nerve from Table 17-37 at page 552). Dr. Slutsky stated that four percent impairment for dysesthesias was not correct because Dr. Rodriguez did not document testing for dysesthesias. He found that impairment for disfigurement of the lower extremity was not appropriate.

By decision dated September 23, 2008, the Office granted appellant a schedule award based on an additional six percent impairment of the left lower extremity for 17.28 weeks, from February 3 to June 3, 2006.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act[5] authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.[6]

[4] Dysesthesia is the distortion of any sense, especially that of touch. It can also be an unpleasant abnormal sensation produced by normal stimuli. *See* DORLAND'S, *Illustrated Medical Dictionary* (30th ed. 2003) 574.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001).

The A.M.A., *Guides* provides for three separate methods for calculating the lower extremity permanent impairment of an individual: anatomic; functional; and diagnosis based.[7] The anatomic method involves noting changes, including muscle atrophy, nerve impairment and vascular derangement, as found during physical examination.[8] The diagnosis-based method may be used to evaluate impairments caused by specific fractures and deformities, as well as ligamentous instability, bursitis and various surgical procedures, including joint replacements and meniscectomies.[9] The functional method is used for conditions when anatomic changes are difficult to categorize, or when functional implications have been documented, and includes range of motion, gait derangement and muscle strength.[10] The evaluating physician must determine which method best describes the impairment of a specific individual based on patient history and physical examination.[11] When uncertain about which method to use, the evaluator should calculate the impairment using different alternatives and choose the method or combination of methods that gives the most clinically accurate impairment rating.[12] If more than one method can be used, the method that provides the higher impairment rating should be adopted.[13]

ANALYSIS

Dr. Rodriguez found that appellant had 44 percent impairment of the left lower extremity. This included: 21 percent for decreased range of motion, including 7 percent for 5 degrees of extension, 7 percent for 15 degrees of flexion, 5 percent for 10 degrees of inversion and 2 percent for 5 degrees of eversion according to Tables 17-11 and 17-12 at page 537 of the A.M.A., *Guides;* 8 percent for sensory nerve impairment of the superficial peroneal nerve based on 4 percent for Grade 2 sensory deficit and 4 percent for Grade 2 dyesthesias and Table 16-10 at page 482 and 17-37 at page 552 (80 percent for Grade 2 multiplied by 5 percent maximum impairment for the superficial peroneal nerve); and 23 percent for Class 1 skin disfigurement based on Table 8-2 at page 178 and Table 17-3 at page 527. Dr. Rodriguez correctly calculated appellant's loss of range of motion with the exception of inversion. The A.M.A., *Guides*, Table 17-12 at page 537, provides that 10 degrees of inversion equals 2 percent impairment, not 5 percent. Therefore, appellant has 18 percent impairment for decreased range of motion. Dr. Rodriguez calculated 23 percent impairment for skin disfigurement of the lower extremity. The Act provides that, for serious disfigurement of the face, head or neck likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed $3,500.00 shall be awarded in addition to any other compensation payable under this

[7] A.M.A., *Guides* 525.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 525, Table 17-1.

[11] *Id.* at 548, 555.

[12] *Id.* at 526.

[13] *Id.* at 527, 555.

schedule.[14] Appellant is not entitled to impairment based on disfigurement of his lower extremity. Regarding appellant's impairment due to sensory deficit and dysesthesias of the superficial peroneal nerve, Dr. Slutsky disagreed with Dr. Rodriguez' assignment of Grade 2, stating that she did not measure protective sensibility. He assigned Grade 3 and calculated 3 percent impairment (60 percent for Grade 3 from Table 16-10 at page 484 multiplied by 5 percent maximum for the superficial peroneal nerve from Table 17-37 at page 552). Dr. Slutsky stated that four percent impairment for dysesthesias was not correct because Dr. Rodriguez did not document testing for dysesthesias. However, Dr. Rodriguez did provide testing results and findings on physical examination for sensory deficit and dysesthesias. She noted that appellant had effusion in the dorsal aspect of his left foot and that palpation of the Achilles tendon produced numbness. The surgical incision overlying the lateral malleolus was mildly tender to palpation. Two-point discrimination testing revealed diminished sensation. Specifically, appellant was unable to feel two-point discrimination to 15 millimeters in a swap of the lateral dorsum and plantar surface of the left foot from the anterior malleolar area to the small toe. Dr. Rodriguez opined that appellant had significant left lower extremity pain and sensory loss. She found no evidence of symptom magnification or nonphysiological complaints. The Board finds that Dr. Rodriguez provided test results, findings on physical examination and medical rationale in support of her assignment of Grade 2 impairment for sensory loss and dysesthesias. Therefore, appellant is entitled to four percent impairment for Grade 2 sensory deficit and four percent for Grade 2 dysesthesias. Combining 18 percent impairment for loss of range of motion with 8 percent for sensory deficit and dysesthesias equals 25 percent combined impairment of the left lower extremity according to the Combined Values Chart at page 604 of the fifth edition of the A.M.A, *Guides.*

CONCLUSION

The Board finds that the September 23, 2008 decision should be modified to reflect that appellant has 25 percent impairment of his left lower extremity, rather than 21 percent. On return of the record, the Office should calculate the amount of compensation to which he is entitled for an additional four percent impairment of his left lower extremity.

[14] 5 U.S.C. § 8107(c)(21).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 23, 2008 is affirmed, as modified.

Issued: March 18, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board