United States Department of Labor
Employees' Compensation Appeals Board

B.S., Appellant	)	
and	)	**Docket No. 09-1203**
	)	**Issued: November 24, 2009**
DEPARTMENT OF THE ARMY, ALABAMA NATIONAL GUARD, Montgomery, AL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 31, 2009 appellant filed a timely appeal from January 8 and March 19, 2009 decisions of the Office of Workers' Compensation Programs denying his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has any permanent impairment causally related to his accepted bilateral foot conditions.

FACTUAL HISTORY

This case was previously before the Board. By decision dated April 23, 2007, the Board affirmed Office decisions dated January 27, March 31 and November 2, 2006 denying appellant's claim for a schedule award. By decision dated December 1, 2005, the Board

affirmed a June 23, 2005 Office decision denying appellant's schedule award claim.[1] The prior Board decisions are herein incorporated by reference.

On October 16, 2008 appellant requested reconsideration. In a June 5, 2007 report, Dr. Chanda Day-Houts, a podiatrist, provided findings on physical examination and x-ray results. She diagnosed bilateral fasciitis, periostitis, calcaneal spurs and arthralgia. Appellant had normal gait and station. Semmes-Weinstein testing revealed normal lower extremity sensation. Reflexes were equal and active. Babinski reflex was absent. A mild hallux abductor valgus deformity (bunion) was noted bilaterally with no lateral deviation of the hallux (big toe). There was hammering of toes 2 to 5 bilaterally. There was pain on palpation of the medial band of the plantar fascia of the forefoot bilaterally. Dorsiflexion was 90 degrees. X-rays revealed a pes planus type of foot bilaterally with a decrease in calcaneal inclination angle and an increase in talar declination angle. There was periosteal irritation at the origin of the medial band of the plantar fascia bilaterally and increased soft tissue density along the medial midfoot bilaterally with some bone spurring. No bony fractures or dislocations were noted on x-ray. Dr. Day-Houts did not address the issue of whether appellant had any permanent impairment causally related to his accepted bilateral foot conditions.

On January 8, 2009 the Office denied appellant's schedule award claim on the grounds that the medical evidence was insufficient to establish that he had permanent impairment to his feet causally related to his accepted bilateral foot conditions.

Appellant requested reconsideration. In a January 30, 2009 report, Dr. Day-Houts stated that appellant had chronic bilateral foot pain and a burning sensation. She provided findings on physical examination and x-ray results. Gait was normal with pronation of the feet throughout the gait cycle. Lower extremity pulses were normal. No edema was noted. Motor and sensory functions were intact bilaterally. Deep tendon reflexes were 4/5 bilaterally. Pathological reflexes were absent bilaterally. Subjective pain was noted on percussion of the tibial nerve bilaterally. There was pronation upon weight bearing with rear foot and forefoot varus. Appellant had pain on palpation at the origin of the plantar fascia bilaterally, made more severe with any attempted dorsiflexion of the ankle and subtalar joints. There was no pain on palpation of the medial and lateral ankle ligaments bilaterally. There was discomfort on palpation and percussion of the posterior tibial tendon bilaterally. There was splaying of the forefoot bilaterally. Dr. Day-Houts estimated appellant's impairment at 10 to 12 percent. She did not explain how she determined this impairment percentage.

On March 17, 2009 an Office medical adviser stated that appellant had chronic foot pain with bilateral plantar spurs, plantar fasciitis and periostitis. He noted that Dr. Day-Houts reported full range of motion of the lower extremities and normal neurological and vascular findings were described. Appellant had subjective pain that was not supported by objective

[1] Docket No. 07-284 (issued April 23, 2007); Docket No. 05-1490 (issued December 1, 2005). Appellant, a heavy mobile equipment mechanic supervisor, submitted a schedule award claim for permanent impairment to his feet caused by his accepted bilateral foot conditions, inferior calcaneal spurs, plantar fasciitis and periostitis.

evidence. The Office medical adviser determined that the medical evidence did not establish bilateral lower extremity impairment.[2]

By decision dated March 19, 2009, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence was not sufficient to establish that he had permanent impairment causally related to his accepted bilateral foot conditions.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing regulations[4] 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. 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 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]

ANALYSIS

On June 5, 2007 Dr. Day-Houts provided findings on physical examination and x-ray results. She estimated appellant's impairment at 10 to 12 percent. However, Dr. Day-Houts did not explain how she determined this impairment percentage with reference to applicable portions of the fifth edition of the A.M.A., *Guides*. Because she did not provide an explanation, based on the A.M.A., *Guides*, as to how she determined that appellant had 10 to 12 percent impairment of his feet, her reports are not sufficient to establish that he is entitled to a schedule award.

An Office medical adviser noted that Dr. Day-Houts reported full range of motion of the lower extremities and normal neurological and vascular findings were described. Appellant had subjective pain that was not supported by objective evidence. The Office medical adviser determined that the medical evidence did not establish bilateral lower extremity impairment.

There is no probative medical evidence establishing that appellant has any permanent impairment causally related to his accepted foot conditions. He has the burden of proof to

[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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Id*.

submit medical evidence supporting that he has permanent impairment of a scheduled member of the body.[6] Appellant has not met his burden of proof.

On appeal, appellant contends that he submitted evidence sufficient to establish his entitlement to a schedule award. However, the medical reports he provided do not establish permanent impairment of his feet. Although Dr. Day-Houts opined that appellant had 10 to 12 percent impairment of his feet, she did not explain how she determined this impairment with reference to applicable sections of the A.M.A., *Guides*. Therefore, the Office properly denied appellant's schedule award claim. Appellant contends that the Office should send him to an Office referral physician to obtain a report sufficient to establish his impairment. However, as noted, he has the burden of proof to submit medical evidence supporting impairment.

CONCLUSION

The Board finds that appellant failed to establish that he had any permanent impairment of his feet causally related to his accepted employment-related conditions.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 19 and January 8, 2009 are affirmed.

Issued: November 24, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[6] *See Annette M. Dent*, 44 ECAB 403 (1993).