

FACTUAL HISTORY

The Office accepted that on or before December 23, 2004 appellant, then a 45-year-old letter carrier, sustained bilateral calcaneal spurs and bilateral retrocalcaneal stress fractures in the performance of duty.¹ Under a previous claim, it accepted bilateral bunions with hallux valgus deformity and plantar fasciitis.² On May 19, 2003 Dr. Victor L. Horsley, an attending podiatrist, performed a right bunionectomy and an Akin osteotomy with flexor tenotomy of the second toe of the right foot. He performed a left bunionectomy with correction of a left fourth hammertoe on August 18, 2003. Appellant required exostectomy and capsulotomy of the left first metatarsal phalangeal joint and a right cheilectomy on March 1, 2004. On April 12, 2006 Dr. Horsely performed bilateral proximal plantar fascial orthotripsy.³ He submitted periodic reports through August 2007 noting work restrictions due to appellant's chronic bilateral foot pain and antalgic gait.

On March 6, 2008 appellant claimed a schedule award. In February 13, 2008 reports, Dr. Horsley found that she had reached maximum medical improvement. He noted that surgery, physical therapy and orthotics failed to relieve appellant's chronic heel pain or correct her apropulsive antalgic gait.

The Office requested that Dr. Horsely perform a schedule award assessment according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*). In a March 31, 2008 report, Dr. Horsley found that appellant reached maximum medical improvement on April 12, 2006. He stated that she experienced 8/10 pain at the first metatarsophalangeal joint bilaterally, with pain into the medial longitudinal arch to the Achilles tendon insertion. Appellant also had pain at the posterior tibial nerve bilaterally. Dr. Horsely found motion of the interphalangeal joint of the great toe limited to 15/30 degrees bilaterally. The metatarsophalangeal joint of the great toe was limited to 45/50 degrees dorsiflexion and 10/30 degrees plantar flexion on the left and 20/50 degrees dorsiflexion and 5/30 degrees plantar flexion on the right. All other lower extremity joints were within normal limits bilaterally. Dr. Horsely found no weakness or atrophy of either lower extremity. He noted that appellant also had functional equines with early heel lift bilaterally.

On September 23, 2008 the Office referred the medical record and a statement of accepted facts to an Office medical adviser for review and rating of the percentage of permanent impairment. In an October 1, 2008 report, the Office medical adviser reviewed the medical record and statement of accepted facts. He applied Table 17-14⁴ of the A.M.A., *Guides* to

¹ The Office accepted these conditions under File No. xxxxxx233. It initially denied File No. xxxxxx233 by decision dated July 22, 2005. Following additional development, the Office accepted the claim on October 20, 2005.

² The Office accepted these conditions under File No. xxxxxx128. It doubled File No. xxxxxx233 with File No. xxxxxx128 on February 22, 2006.

³ On May 18, 2006 the Office obtained a second opinion from Dr. John D. Krause, a Board-certified orthopedic surgeon, regarding appellant's work restrictions.

⁴ Table 17-14, page 537 of the fifth edition of the A.M.A., *Guides* is entitled "Toe Impairments." For the great toe, the two grading criteria are limitation of metatarsophalangeal extension and interphalangeal flexion.

Dr. Horsley's findings for the right great toe, finding that limitation of the interphalangeal joint to 15 degrees flexion equaled a two percent impairment and metatarsophalangeal dorsiflexion limited to 45 degrees equaled a zero percent impairment. This resulted in a two percent impairment of the right lower extremity. Regarding the left great toe, the medical adviser determined that limitation of the interphalangeal joint to 15 degrees and dorsiflexion of the metatarsophalangeal joint to 20 degrees equaled both equaled two percent impairments, resulting in a four percent impairment of the left lower extremity.

By decision dated October 21, 2008, the Office granted appellant schedule awards for a two percent permanent impairment of the right lower extremity and a four percent impairment of the left lower extremity.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act⁵ provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁶

The standards for evaluation the permanent impairment of an extremity under the A.M.A., *Guides* are based on loss of range of motion, together with all factors that prevent a limb from functioning normally, such as pain, sensory deficit and loss of strength. All of the factors should be considered together in evaluating the degree of permanent impairment.⁷

ANALYSIS

The Office accepted that appellant sustained bilateral hallux valgus deformity, bilateral plantar fasciitis, bilateral calcaneal spurs and bilateral retrocalcaneal stress fractures, requiring four surgical procedures from 2003 to 2006. Dr. Horsely, an attending podiatrist, submitted a March 31, 2008 impairment assessment noting that, appellant had reached maximum medical improvement. He found that the interphalangeal joint of the great toe limited to 15 degrees flexion bilaterally. The metatarsophalangeal joint of the great toe was limited to 45 degrees dorsiflexion on the left and 20 degrees dorsiflexion on the right.

An Office medical adviser reviewed Dr. Horsley's reports on October 1, 2008. He applied Table 17-14 of the A.M.A., *Guides*, pertaining to impairments of the great toe, to Dr. Horsely's findings. The medical adviser found that, according to Table 17-14, limitation of

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁷ *Tammy L. Meehan*, 53 ECAB 229 (2001).

the interphalangeal joint of the great toe to 15 degrees flexion bilaterally equaled a two percent impairment of the each lower extremity. Appellant also had a two percent impairment of the left lower extremity due to dorsiflexion of the metatarsophalangeal joint limited to 20 degrees. The medical adviser therefore determined that appellant had a two percent impairment of the right lower extremity and a four percent impairment of the left lower extremity.

The Board finds that the Office medical adviser used the appropriate portions of the A.M.A., *Guides* to calculate the percentages of impairment awarded. The medical adviser accurately applied the rating criteria to Dr. Horsely's findings. The Board finds that the Office medical adviser's opinion is sufficient to represent the weight of the medical evidence.⁸

On appeal, appellant asserted that the accepted injuries often prevented her from working due to a lack of light-duty work within her medical restrictions. The decision before the Board on the present appeal is the October 21, 2008 schedule award. Appellant's contentions regarding light-duty work pertain to possible wage loss due to her accepted injury and are not relevant to the issue of permanent impairment.⁹

CONCLUSION

The Board finds that appellant has not established that she sustained greater than a two percent impairment of the right lower extremity and a four percent impairment of the left lower extremity, for which she received a schedule award.

⁸ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

⁹ The Board noted that the amount payable pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities. See *Ruben Franco*, 54 ECAB 496 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 21, 2008 is affirmed.

Issued: September 11, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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