United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 10-1246**
	)	**Issued: December 7, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Devon, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 1, 2010 appellant filed a timely appeal from the December 9, 2009 schedule award decision of the Office of Workers' Compensation Programs. 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 impairment to her left lower extremity.

FACTUAL HISTORY

On October 1, 2001 appellant, then a 46-year-old mail handler, sprained her left ankle while exiting her vehicle in the employing establishment parking lot. On April 8, 2009 she filed a claim for a schedule award.

On October 1, 2001 Dr. Roy Stahlman noted that a left ankle x-ray revealed swelling but no fracture. He diagnosed a left ankle sprain and placed appellant on sedentary work. An October 9, 2001 magnetic resonance imaging (MRI) scan revealed a possible bone contusion

involving the inferior talar neck and head. On October 25, 2001 Dr. Craig A. Reigel, an orthopedic specialist, provided findings on examination and noted that left ankle x-rays were within normal limits and an MRI scan revealed increased uptake in the talar neck and also an effusion. He diagnosed a left lateral ankle sprain. On November 13, 2001 Dr. Stahlman noted that the left ankle sprain had resolved and the physical examination was normal. Appellant was released to regular work without restrictions. A December 7, 2001 MRI scan of the left ankle was normal. On December 10, 2001 Dr. Stahlman reported a normal examination and diagnosed a resolved left ankle sprain. He returned appellant to regular work without restrictions and discharged her from treatment.

In a February 19, 2009 report, Dr. Nicholas Diamond, an osteopathic physician, reviewed the medical history and provided findings on physical examination. He noted that appellant denied any ongoing left ankle pain. Appellant ambulated with a symmetrical gait and was able to get on and off the examination table without difficulty. Calcaneal and equinus gait were carried through within normal limits. Appellant had no gross effusion in her left ankle. There was no tenderness over the medial malleolus, anterior talofibular ligament, subtalar joint or common peroneal or posterior tibia. There was tenderness over the lateral malleolus and deltoid ligament. Range of motion testing revealed dorsiflexion of 15/15 degrees, plantar flexion of 50/55 degrees, inversion of 35/35 degrees and eversion of 25/35 degrees. Anterior drawer sign was negative. Single heel raise was negative. Manual muscle strength testing revealed dorsiflexion, plantar flexion and eversion at 5/5/on the left. Inversion was graded at 4+/5 to 5/5 on the left. The gastrocnemius was 5/5. Sensory examination of the left lower extremity was normal. Deep tendon reflexes were +2 and physiological. Gastrocnemius muscle (calf) circumferential measurements were 35 centimeters (cm) on the right and 36.5 cm on the left. Ankle joint circumferential measurements revealed 23.5 cm on the right and 24 cm on the left. Dr. Diamond rated appellant's left leg impairment at six percent for left calf atrophy, according to Table 17.6 at page 530 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*).[1]

On April 20, 2009 Dr. Arnold T. Berman, an Office medical adviser, noted that appellant reported no ongoing left ankle pain on examination by Dr. Diamond. He stated that left calf atrophy was not consistent with normal functioning and noted a lack of pain for eight years after the October 1, 2001 left ankle sprain. Dr. Berman found no left ankle impairment.

By decision dated April 30, 2009, the Office denied appellant's claim for a schedule award.

Appellant requested a hearing that was held on October 15, 2009.

By decision dated December 9, 2009, an Office hearing representative affirmed the April 30, 2009 decision.

[1] There is no medical evidence regarding appellant's left ankle between December 2001 and February 2009.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulations[3] 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 regulation as the appropriate standard for evaluating schedule losses.[4]

ANALYSIS

Appellant sustained a left ankle sprain on October 1, 2001 while in the performance of duty. A December 7, 2001 MRI scan of the left ankle was normal. On December 10, 2001 Dr. Stahlman reported a normal examination and diagnosed a resolved left ankle sprain. He returned appellant to regular work without restrictions and discharged her from treatment. There is no further medical evidence regarding her left ankle until 2009.

On February 19, 2009 Dr. Diamond noted that appellant denied any ongoing left ankle pain. She ambulated with a symmetrical gait and was able to get on and off the examination table without difficulty. Calcaneal and equinus gait were carried through within normal limits. Appellant had no gross effusion in her left ankle. There was no tenderness over the medial malleolus, anterior talofibular ligament, subtalar joint or common peroneal or posterior tibia. There was tenderness over the lateral malleolus and deltoid ligament. Range of motion testing revealed dorsiflexion of 15/15 degrees, plantar flexion of 50/55 degrees, inversion of 35/35 degrees and eversion of 25/35 degrees. Anterior drawer sign was negative. Single heel raise was negative. Manual muscle strength testing revealed dorsiflexion, plantar flexion and eversion at 5/5/on the left. Inversion was graded at 4+/5 to 5/5 on the left. The gastrocnemius was 5/5. Sensory examination of the left lower extremity was normal. Deep tendon reflexes were +2 and physiological. Gastrocnemius circumferential measurements were 35 cm on the right and 36.5 cm on the left. Ankle joint circumferential measurements revealed 23.5 cm on the right and 24 cm on the left. Dr. Diamond rated appellant's left ankle impairment at six percent for left calf (gastrocnemius muscle) atrophy, according to Table 17.6 at page 530 of the fifth edition of the A.M.A., *Guides*). However, the calf measurements taken by Dr. Diamond revealed that the gastrocnemius muscle in the left leg was larger than the muscle in the uninjured right leg. This is not consistent with atrophy of the left calf. An atrophied left calf would be smaller in circumference compared to the right calf. An impairment rating based on left calf atrophy is not fully explained based on Dr. Diamond's physical examination of appellant's left leg.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

[4] *Id.*

Dr. Berman noted that appellant reported no ongoing left ankle pain on examination by Dr. Diamond. Left calf atrophy was not consistent with a history of normal functioning and the lack of any history of pain for eight years after the October 1, 2001 left ankle sprain. Dr. Berman found no left ankle impairment based on Dr. Diamond's report and the medical evidence of record.

On appeal appellant contends that there is a conflict between Dr. Diamond, who found six percent left leg impairment, and Dr. Berman, who found no impairment. As noted, Dr. Diamond's finding of left leg atrophy is not adequately explained in light of the physical findings in his report. His opinion on the issue of impairment is of diminished probative value or to create a conflict with Dr. Berman.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she had left ankle permanent impairment.

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2010
Washington, DC

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

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

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