

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

S.J., Appellant)
)
)
and) **Docket No. 09-1476**
) **Issued: February 19, 2010**
)
DEPARTMENT OF DEFENSE, DECA)
SOUTHERN REGION, Fort Lee, VA, Employer)
)

Appearances:
Alan J. Shapiro, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 26, 2009 appellant filed a timely appeal from an April 29, 2009 merit decision of the Office of Workers' Compensation Programs concerning her schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has established that she has any permanent impairment causally related to her accepted left plantar fasciitis.

FACTUAL HISTORY

This is the third time this case has been before the Board. By decision dated September 12, 2007, the Board affirmed Office decisions dated August 10, 2006, January 5 and February 8, 2007 denying appellant's claim for a schedule award.¹ The Board found that

¹ Docket No. 07-1037 (issued September 12, 2007). The Office accepted that appellant suffered an exacerbation of left plantar fasciitis.

appellant's physician, Dr. John B. Bielz, an orthopedic surgeon, did not provide a rationalized medical opinion explaining how her lower extremity impairment was related to her accepted left plantar fasciitis condition. The Board also found that the Office properly denied appellant's request for an oral hearing and her request for reconsideration. By decision dated January 6, 2009, the Board set aside an April 18, 2008 Office decision denying reconsideration and remanded the case to the Office to conduct a merit review of the evidence submitted in support of appellant's request for reconsideration.² The Board found that the September 12, 2007 report from Dr. Thomas F. Smith, a podiatrist, constituted relevant new evidence with regard to whether appellant had permanent impairment due to her accepted condition. The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference.

Evidence received after the last merit decision of the Office included: September 12, 2007 report from Dr. Smith, a September 12, 2007 letter from Dr. Smith to appellant's attorney regarding payment; a September 11, 2007 attending physician's report from Dr. Smith and multiple reports regarding appellant's right shoulder condition.

In his September 12, 2007 report, Dr. Smith noted that appellant was evaluated on August 17, 2007 for protracted heel pain since an injury while standing at work in 2001. He noted that she could only stand for 20 minutes or walk for 200 yards without significant pain requiring rest. Dr. Smith diagnosed chronic plantar fasciitis with heel spur bilaterally and inferior calcaneal spurring by radiographs. He opined that maximum medical improvement had been reached and advised that appellant could not stand or walk for more than one hour throughout an eight-hour shift without rests and breaks. Dr. Smith advised that determination was based on her clinical history, physical findings of pain to palpation of her heel, and radiographic evidence of inferior calcaneal spurring. Under Table 7-33 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (hereinafter A.M.A., *Guides*), he opined that appellant had 10 percent lower extremity or 14 percent foot impairment for her chronic plantar fasciitis. Dr. Smith's September 11, 2007 attending physician's report did not rate permanent impairment causally related to the accepted condition.

In a March 25, 2009 report, an Office medical adviser reviewed the medical evidence, including Dr. Smith's September 12, 2007 report. He opined that the date of maximum medical improvement was September 12, 2007. The medical adviser advised that the A.M.A., *Guides* did not contain a Table 7-33. He further found that Dr. Smith's September 12, 2007 letter did not contain any objective findings that merited an impairment rating. On April 21, 2009 the Office noted that Dr. Smith's citation of Table 7-33 might have been a typographical error. It requested the Office medical adviser to clarify whether other medical reports, which cited Table 17-33, would make a difference in assigning a ratable impairment. In an April 22, 2009 response, the Office medical adviser advised that Table 17-33 of the A.M.A., *Guides* does not contain a listing for plantar fasciitis. He reiterated that the record did not contain objective findings which merited an impairment rating.

By decision dated April 29, 2009, the Office denied modification of its previous denials of appellant's schedule award claim.

² Docket No. 08-1608 (issued January 6, 2009).

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulations⁴ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.⁵ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁶ A claimant may seek an increased schedule award if the evidence establishes that she sustained an increased impairment at a latter date causally related to her employment injury.⁷

Not all medical conditions accepted by the Office result in permanent impairment to a scheduled member.⁸

ANALYSIS

The Office accepted appellant's claim for a left plantar fasciitis condition. In his September 12, 2007 report, Dr. Smith diagnosed chronic plantar fasciitis with heel spur bilaterally and inferior calcaneal spurring by radiographs. He opined that, under Table 7-33 of the A.M.A., *Guides*, appellant had a 10 percent lower extremity rating and a 14 percent foot rating for her chronic plantar fasciitis. However, an impairment to the lower extremity would be found under Chapter 17 of the A.M.A., *Guides*. The Office medical adviser properly noted that the A.M.A., *Guides* did not contain a Table 7-33. He also properly found Table 17-33, at page 547 of the A.M.A., *Guides*, which addresses permanent impairment of the lower extremities provides no impairment rating for plantar fasciitis noted by Dr. Smith. Thus, the Board finds that the impairment rating of Dr. Smith is of limited probative value as he did not properly rate impairment under the A.M.A., *Guides*.⁹ The other recent reports from Dr. Smith do not contain information relevant for a schedule award determination due to the accepted left plantar fasciitis condition.

The Office medical adviser also found that the medical evidence regarding appellant's accepted condition did not otherwise reveal any objective findings or limitations that would

³ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.404.

⁵ 5 U.S.C. § 8107(c)(19).

⁶ *Supra* note 4.

⁷ *Linda T. Brown*, 51 ECAB 115 (1999).

⁸ *Thomas P. Lavin*, 57 ECAB 353 (2006).

⁹ *Shalanya Ellison*, 56 ECAB 150, 154 (2004) (schedule awards are to be based on the A.M.A., *Guides*; an estimate of permanent impairment is not probative where it is not based on the A.M.A., *Guides*).

provide a basis for a finding of permanent impairment based on the A.M.A., *Guides*. He concluded that appellant had no ratable impairment of the left lower extremity.

There is no probative medical evidence establishing that appellant has any impairment causally related to her accepted left plantar fasciitis condition. Appellant has the burden of proof to submit medical evidence supporting that she has permanent impairment of a scheduled member of the body.¹⁰ She has not met her burden of proof.

CONCLUSION

The Board finds that appellant failed to establish that she had any permanent impairment of her left lower extremity causally related to her accepted plantar fasciitis condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 29, 2009 is affirmed.

Issued: February 19, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹⁰ See *Annette M. Dent*, 44 ECAB 403 (1993).