

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

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C.V., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Falls Church, VA, Employer )

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**Docket No. 09-1215  
Issued: January 21, 2010**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 8, 2009 appellant timely appealed the March 20, 2009 merit decision of the Office of Workers' Compensation Programs, which granted a schedule award. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has greater than seven percent impairment of both the left and right lower extremity.

**FACTUAL HISTORY**

Appellant, a 52-year-old letter carrier, has an accepted occupational disease claim for bilateral Achilles tendinitis and bilateral calcaneal spur, which arose on or about February 26, 2000. She underwent surgeries on August 31, 2000 and August 13, 2003, for her left and right foot, respectively. On February 12, 2008 appellant filed a claim for a schedule award.

Appellant's podiatrist, Dr. Paul B. Cannon, submitted a May 14, 2008 impairment rating. He found seven percent bilateral lower extremity impairment due to loss of ankle motion. Dr. Cannon also found an additional 18 percent impairment bilaterally for Achilles tendinitis with spurring and 4 percent bilaterally for heel spur syndrome.

On January 22, 2009 Dr. Willie E. Thompson, a Board-certified orthopedic surgeon and district medical adviser (DMA), reviewed the record, including Dr. Cannon's May 14, 2008 report. He found seven percent bilateral impairment for loss of ankle motion based on Dr. Cannon's measurement of zero degrees dorsiflexion. The DMA further noted that Dr. Cannon's report did not otherwise adhere to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001).

By decision dated March 20, 2009, the Office granted a schedule award for seven percent impairment of the left and right lower extremities. The award covered a period of 40.32 weeks beginning August 13, 2004.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>1</sup> The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>2</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>3</sup>

### **ANALYSIS**

Appellant claims that she was mistakenly paid a schedule award for only her right foot. Because she underwent surgery on both feet, she argued that the two different body parts should have been rated separately and she should have received an award for each lower extremity. Appellant also argued that the Office should have paid compensation at the 3/4 rate (75 percent) because of her marital status. She indicated that she had been married since February 13, 1988 and had not been separated or divorced.

With respect to appellant's first argument, the Board notes that she was in fact granted a schedule award for impairment of both the left and right lower extremity. The March 20, 2009 schedule award clearly indicated that appellant had seven percent impairment for both the left and right lower extremity. Appellant received a total of 40.32 weeks' compensation, which

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<sup>1</sup> For a total loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2) (2006).

<sup>2</sup> 20 C.F.R. § 10.404 (2009).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

corresponds to 20.16 weeks or seven percent impairment for each lower extremity.<sup>4</sup> Her podiatrist, Dr. Cannon, and the DMA agreed that there was seven percent impairment of both the left and right lower extremities due to loss of ankle motion (dorsiflexion).<sup>5</sup> Dr. Cannon found an additional 22 percent impairment for each lower extremity. However, his May 14, 2008 report does not explain how he arrived at this rating. The lower extremity evaluation worksheet that accompanied Dr. Cannon's May 14, 2008 narrative suggests that the additional 22 percent bilateral impairment was a diagnosis-based estimate (DBE).<sup>6</sup> However, the A.M.A., *Guides* preclude a combination of impairments for loss of range of motion and DBE ratings.<sup>7</sup>

The Board finds that the DMA's January 22, 2009 impairment rating conforms to the A.M.A., *Guides* (5<sup>th</sup> ed. 2001), and thus, represents the weight of the medical evidence regarding the extent of appellant's bilateral lower extremity impairment. Appellant has not submitted any credible medical evidence indicating that she has greater than seven percent impairment of either the left or right lower extremity.

As to her second argument, appellant is correct that the Office mistakenly paid her at the 66 2/3 rate rather than 3/4 or 75 percent. Basic compensation for disability or impairment is equal to 66 2/3 percent of the injured employee's monthly pay.<sup>8</sup> Compensation may be increased to 75 percent of the employee's monthly pay if he or she has an eligible dependent.<sup>9</sup> Although appellant neglected to identify her spouse as a dependent on her February 12, 2008 claim for a schedule award, previous CA-7s that she submitted identified her husband as an eligible dependent. Moreover, the payment history for the claim indicates that the Office previously compensated appellant at the 75 percent rate. Accordingly, the March 20, 2009 schedule award is modified to reflect appellant's entitlement to compensation at the 75 percent rate.

### CONCLUSION

Appellant has not established that she has greater than seven percent impairment of both the left and right lower extremity. The Board further finds that she is entitled to compensation at the rate of 75 percent due to her current marital status.

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<sup>4</sup> See *supra* note 1.

<sup>5</sup> See A.M.A., *Guides* 537, Table 17-11.

<sup>6</sup> See *id.* at 546-47, Table 17-13.

<sup>7</sup> See *id.* at 526, Table 17-2.

<sup>8</sup> 5 U.S.C. §§ 8105(a), 8107(a).

<sup>9</sup> 20 C.F.R. §§ 10.404(b), 10.405.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 20, 2009 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: January 21, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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