

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

S.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Birmingham, AL, Employer**

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**Docket No. 10-162
Issued: July 14, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 21, 2009 appellant filed a timely appeal from the October 28, 2008 merit decision of the Office of Workers' Compensation Programs, which denied her schedule award claim. Appellant had up to one year to appeal that decision to the Board. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of the case.¹

Appellant did not appeal the Office's January 30, 2009 nonmerit decision denying her request for reconsideration.²

ISSUE

The issue is whether appellant sustained permanent impairment warranting a schedule award.

¹ For Office decisions issued prior to November 19, 2008, a claimant has up to one year file a Board appeal. *See* 20 C.F.R. § 501.3(d)(2).

² For Office decisions issued on or after November 19, 2008 a claimant has 180 days to file a Board appeal. *See* 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

On April 11, 2005 appellant, then a 46-year-old postal clerk, filed a claim alleging that her bilateral plantar fasciitis was the result of her federal employment:

“Continuous heavy lifting, pushing, positioning of postal containers along with sorting parcels, Oxmoor books, and lifting and casing Ebsco magazines and parcels. All of these tasks done on concrete floor without cushioning mats for the feet. No tow motors or mail handlers available to move heavy containers from staging areas to processing location.”

The Office accepted her claim for plantar fascial fibromatosis. On April 8, 2008 appellant filed a schedule award claim. She submitted an October 15, 2007 impairment evaluation from a physical therapist, who stated:

“This examiner reviewed the medical records related to the above referenced work-related injury and performed an examination consistent with the procedures in the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition*. At the conclusion of the above, this Examiner used the ROM [range of motion] method as outlined in Chapter 17 of the *Guides* to rate the Examinee’s impairments. The abnormal ankle and toe ROMs were rated using Tables 17-11 and 17-14, page 537. Each lower extremity’s estimated impairments are as follows: whole-person, 6%; lower extremity, 14%, and foot, 19%. Using the Combined Values Chart, Examinee’s total estimated impairments are as follows: whole-person, 12%; lower extremities, 26%; and feet, 34%.”

Dr. John S. Kirchner, appellant’s orthopedic surgeon, signed off on the impairment rating: “Agree with above.”

On April 30, 2008 an Office medical adviser reviewed the medical reports of record. He stat that the impairment rating of 14 percent was applied to each lower extremity with no basis, as follows:

“If a decreased ROM is noted we need each ROM recorded in degrees in the specific joint based on *AMA V Guides* page 537. The SA [schedule award] was calculated by the PT [physical therapist] and the *AMA V Guides* were not used correctly. Based on available information, the SA for impairment for each LE [lower extremity] is equal to zero percent.”

In a decision dated October 28, 2008, the Office denied appellant’s schedule award claim. It requested Dr. Kirchner on August 19, 2008 to provide the degrees of range of motion in each of the specific joints, but no further evidence was received.

On appeal, appellant argues there was no clear reason for the Office to deny her claim based on her medical records and she forwarded all medical information relevant to her case.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act³ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*.⁴

A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.⁵ A claimant seeking a schedule award therefore has the burden of establishing that her accepted employment injury caused permanent impairment of a scheduled member, organ or function of the body.⁶

ANALYSIS

The Office denied appellant's schedule award claim on October 28, 2008 because the impairment rating approved by Dr. Kirchner, did not contain findings of the degrees in loss of motion joints. The rating generally referred severally to Table 17-11 and Table 17-14, page 537 of the A.M.A. *Guides*, but without measured and recorded ranges of motion for each of the joints. The Office was unable to determine how Dr. Kirchner used those tables to calculate a 14 percent impairment to each lower extremity. The Office had no basis to confirm Dr. Kirchner's rating.

Appellant has the burden of proof to establish her schedule award claim. Because the medical evidence of record at the time of the Office's October 28, 2008 decision was insufficient to demonstrate impairment to her lower extremities, the Board finds that the Office properly denied appellant's claim for a schedule award. The Board will affirm the Office's October 28, 2008 decision.

Appellant argues on appeal that she has forwarded all medical information. As noted, the medical evidence submitted prior to the Office's October 28, 2008 decision did not list the degrees of ranges of motion needed to support Dr. Kirchner's October 15, 2007 impairment rating. The Office's October 28, 2008 decision was properly based on the evidence that was of record at that time.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁶ *E.g., Russell E. Grove*, 14 ECAB 288 (1963) (where medical reports from the attending physicians showed that the only leg impairment was due to arthritis of the knees, which was not injury related, the claimant failed to meet his burden of proof to establish entitlement to a schedule award).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she is entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 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