United States Department of Labor
Employees' Compensation Appeals Board

C.D., Appellant	)	
and	)	**Docket No. 09-1861**
	)	**Issued: June 10, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 14, 2009 appellant filed a timely appeal of a June 23, 2009 Office of Workers' Compensation Programs' decision that affirmed a December 5, 2008 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than 17 percent impairment of the right leg for which she received a schedule award.

FACTUAL HISTORY

On March 7, 1997 appellant, then a 30-year-old part-time city carrier, slipped and fell on icy steps and injured her right ankle. The Office accepted a right ankle sprain, right deltoid ligament tear, right equinovarus deformity and pain disorder. Appellant did not stop work but returned to light duty. Appropriate compensation benefits were paid.

Appellant was initially treated by Dr. Robert Leb, a Board-certified orthopedic surgeon. On January 13, 1999 Dr. Leb performed arthroscopic surgery for medial impingement and decompression and diagnosed right ankle medial deltoid ligament sprain with impingement. A September 28, 1999, right ankle magnetic resonance imaging (MRI) scan revealed mild tenosynovitis of the flexor hallucis longus, marked thickening of the anterior superficial fibers of the deltoid ligament suggesting a chronic tear with healing and a one centimeter transversely oriented fracture of the tip of the medial malleolus. On March 23, 2000 Dr. Leb performed an exploration of the medial ankle with debridement and open lengthening of Achilles tendon. He diagnosed equinovarus deformity and chronic medial ankle impingement syndrome.

Appellant sought treatment from Dr. Alan W. Davis, a Board-certified orthopedic surgeon, beginning September 8, 1999. Dr. Davis diagnosed equinovarus deformity along with chronic and worsening inflammation of the posterior tibial tendon. He opined that appellant developed reflex sympathetic dystrophy, reflex regional pain syndrome and pain disorder with medical and psychological factors.

On May 7, 2003 the Office accepted pain disorder with both psychological factors and general medical condition.

On May 15, 2005 appellant filed a claim for a schedule award. She submitted a December 14, 2005 x-ray of her right ankle which revealed narrowing of the articulation between the medial malleolus, lateral malleolus and talus, mild hypertrophic spurring and degenerative changes.

On November 7, 2006 the Office referred appellant to Dr. Karl V. Metz, a Board-certified orthopedic surgeon, for an evaluation of any permanent impairment to the right leg in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[1] (A.M.A., *Guides*). In a December 4, 2006 report, Dr. Metz diagnosed right ankle sprain, sprain of the right deltoid ligament, acquired equinovarus deformity on the right and pain in the right ankle and foot. He noted that appellant reached maximum medical improvement in the fall of 2003. Examination of the right ankle revealed plantar flexion of 35 degrees for zero percent whole person impairment, extension of 5 degrees for three percent whole person impairment, inversion of 20 degrees for one percent whole person impairment, eversion of 5 degrees for one percent whole person impairment, right calf atrophy of three centimeters for five percent impairment and three percent for ongoing pain. Dr. Metz opined that appellant had 13 percent whole person impairment.

On December 26, 2006 the Office requested that Dr. Metz clarify his opinion noting that schedule awards were not granted for whole person impairment ratings. In a January 3, 2007 report, Dr. Metz noted plantar flexion measured 35 degrees for 0 percent impairment,[2] extension measured 5 degrees for 7 percent impairment,[3] inversion measured 20 degrees for 2 percent

[1] A.M.A., *Guides* (5th ed. 2001).

[2] *Id.* at 537, Table 17-11.

[3] *Id.*

impairment,[4] eversion measured 5 degrees for 2 percent impairment,[5] right calf atrophy measured three centimeters for 13 percent impairment and gait abnormality with a mild limp was a 17 percent impairment. Pursuant to the A.M.A., *Guides,* he rated 41 percent impairment to the right lower extremity.

On May 4, 2007 an Office medical adviser concurred with Dr. Metz's impairment rating for range of motion deficits which totaled 11 percent impairment. He also concurred with Dr. Metz's determination that appellant sustained right calf atrophy of three centimeters for 13 percent impairment.[6] However, the Office medical adviser found that Dr. Metz incorrectly provided a rating for gait derangement. He noted that, under Table 17-5 of the A.M.A., *Guides,* appellant would not be entitled to an award for gait derangement because she was not dependent on assistive devices and did not have an x-ray showing evidence of arthritis. The Office medical adviser further noted that Dr. Metz's assessment of chronic pain was arbitrary and that the objective findings sufficiently described appellant's functional impairment. He noted that appellant reached maximum medical improvement on January 3, 2007.

The Office referred the medical adviser's report to Dr. Metz. On September 26, 2007 Dr. Metz noted that losses for range of motion, gait disturbance and limb atrophy could be combined pursuant to the Cross Usage Chart at Table 17-2 of the A.M.A., *Guides*. He revised his impairment rating, finding 17 percent impairment for gait derangement[7] and 7 percent for chronic pain.[8] Dr. Metz opined that appellant had gait impairment based on x-rays of the right ankle dated December 14, 2005 which revealed degenerative changes.

On January 28, 2008 the Office medical adviser agreed that appellant had 17 percent right leg impairment. He concurred with Dr. Metz that under Table 17-2 calf atrophy should not be combined with loss of range of motion. However, appellant did not have impairment for a limp pursuant to Table 17-5 of the A.M.A., *Guides* because she did not require the use of assistive devices. The Office medical adviser noted that appellant had seven percent impairment for range of motion deficit of the right ankle, four percent impairment for range of motion deficit of the hind foot and three percent whole person impairment for chronic pain under Chapter 18 of the A.M.A., *Guides* that converted to seven percent for the leg.[9] The values combined to yield 17 percent impairment of the right lower extremity.[10]

[4] *Id.* at 537, Table 17-12.

[5] *Id.*

[6] *Id.* at 530, Table 17-6.

[7] *Id.* at 529, Table 17-5.

[8] *Id.* at 527, Table 17-3.

[9] *Id*. at 574.

[10] *Id*. at 604.

In a decision dated April 29, 2008, the Office granted appellant a schedule award for 17 percent impairment of the right leg. The period of the award was January 3 to December 11, 2007.

On May 21, 2008 appellant requested an oral hearing. She submitted reports dated April 30 to June 4, 2008 from Dr. Davis, who noted her continued treatment for chronic right ankle pain.

In an August 4, 2008 decision, an Office hearing representative set aside the April 29, 2008 schedule award and remanded the case for further medical development. He noted that the second opinion physician provided two supplemental reports with different impairment ratings that differed from the impairment rating provided by the medical adviser. The hearing representative instructed the Office to refer appellant for a new second opinion physician to determine the percentage of impairment.

On August 6, 2008 the Office referred appellant for a second opinion to Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon, for an evaluation of the degree of permanent impairment of the right leg under the A.M.A., *Guides*. In a September 16, 2008 report, Dr. Ghanma diagnosed right ankle sprain, sprain of the right deltoid ligament, right acquired equinovarus deformity and pain in the right ankle joint and foot. On physical examination of the right ankle and foot, he advised that the right calf measured 53 centimeters compared to 52 centimeters on the left and ambulation revealed a mild limp. Dr. Ghanma noted that plantar flexion measured 40 degrees, extension or dorsiflexion measured "60" degrees, inversion measured 30 degrees and eversion measured 15 degrees. He opined that dorsiflexion provided seven percent impairment, right calf atrophy of one centimeter represented three percent impairment, gait abnormality was not severe enough to warrant impairment and two percent for pain-related impairment. Dr. Ghanma opined that appellant sustained 12 percent impairment to the right lower extremity pursuant to the A.M.A., *Guides*.

In an October 27, 2008 report, a second Office medical adviser noted that Dr. Ghanma's report contained a typographical error as it was apparent that appellant had 6 degrees of dorsiflexion, or extension, rather than 60 degrees. Consequently, the medical adviser calculated that plantar flexion measured 40 degrees for zero percent impairment,[11] dorsiflexion measured 6 degrees for seven percent impairment,[12] inversion measured 30 degrees for zero percent impairment,[13] eversion measured 15 degrees for zero percent impairment,[14] and two percent for pain-related impairment. He concurred with Dr. Ghanma's determination that appellant's gait abnormality was not severe enough to warrant impairment.[15] The medical adviser further noted that Dr. Ghanma incorrectly awarded three percent impairment for calf atrophy, as it could not

[11] *Id.*

[12] *Id.*

[13] *Id.* at 537, Table 17-12.

[14] *Id.*

[15] *Id.* at 529, Table 17-5.

be combined with range of motion deficits pursuant to Table 17-2 of the A.M.A., *Guides.* He noted that pursuant to the Combined Values Chart appellant had nine percent impairment of the right lower extremity.[16]

In a December 5, 2008 decision, the Office denied appellant's claim for an additional schedule award.

On December 11, 2008 appellant requested an oral hearing that was held on April 6, 2009.

In a June 23, 2009 decision, the hearing representative affirmed the Office decision dated December 5, 2008.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[17] and its implementing regulations[18] 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 regulations as the appropriate standard for evaluating schedule losses.[19]

ANALYSIS

The Office accepted appellant's claim for a right ankle sprain, right deltoid ligament tear, right equinovarus deformity and pain disorder. It authorized arthroscopic surgery which was performed on January 13, 1999 and March 23, 2000.

The Office referred appellant to Dr. Ghanma for a second opinion.[20] In a report dated September 16, 2008, Dr. Ghanma diagnosed right ankle sprain, sprain of the deltoid ligament,

[16] *Id.* at 604.

[17] 5 U.S.C. § 8107.

[18] 20 C.F.R. § 10.404 (1999).

[19] *See id.*; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[20] The Board notes that the Office initially referred appellant to Dr. Metz for a second opinion who issued a December 4, 2006 report based on whole person impairment. The Office requested that Dr. Metz provide clarification with regard to his impairment rating and he issued supplemental reports on January 3 and September 26, 2007. However, an Office hearing representative found that Dr. Metz's reports and those of the Office medical adviser were insufficient to establish permanent impairment. The Office acted properly in referring appellant for another opinion. *See Ayanle A. Hashi*, 56 ECAB 234 (2004) (when the Office refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, the Office should secure an appropriate report on the relevant issues).

right, acquired equinovarus deformity, right and pain in joint, right ankle, foot. He found that plantar flexion of 40 degrees,[21] inversion of 30 degrees,[22] and eversion of 15 degrees[23] did not warrant impairment under the A.M.A., *Guides*. The Board notes that Dr. Ghanma listed dorsiflexion deficit at seven percent impairment based on extension measured "60" degrees. Dr. Ghanma further noted that right calf atrophy measured one centimeter for three percent impairment.[24] Table 17-2 of the A.M.A., *Guides*, provides that if the evaluator uses range of motion analysis then the evaluator cannot also rate impairment based on muscle atrophy or the diagnostic-based estimates.[25] Consequently, impairment attributable for calf atrophy cannot be combined with impairment for decreased motion.

The medical adviser utilized the findings by Dr. Ghanma and correlated them to the A.M.A., *Guides* (fifth edition). He noted that Dr. Ghanma's extension measurement of "60" degrees was a typographical error and that extension or dorsiflexion of 6 degrees was consistent with Dr. Ghanma's finding that appellant had seven percent impairment for dorsiflexion under Table 17-11. The Board finds that this determination is consistent with the A.M.A., *Guides.* The medical adviser calculated that plantar flexion of 40 degrees was zero percent impairment,[26] inversion of 30 degrees was zero percent impairment,[27] and eversion of 15 degrees was zero percent impairment.[28] He concurred in Dr. Ghanma's determination that appellant was entitled to two percent impairment for pain.[29] However, the medical adviser properly noted that Dr. Ghanma incorrectly awarded three percent impairment for calf atrophy. This rating cannot be combined with range of motion deficits pursuant to Table 17-2 of the A.M.A., *Guides.* Upon application of the Combined Values Chart he determined that appellant had nine percent permanent impairment of the right lower extremity.

The Board finds that appellant does not have more than 17 percent permanent impairment of the right lower extremity, for which she previously received a schedule award. The evaluation

[21] A.M.A., *Guides* 537, Table 17-11.

[22] *Id.* at 537, Table 17-12.

[23] *Id.*

[24] *Id.* at 530, Table 17-6.

[25] *Id.* at 526, Table 17-2.

[26] *Id.*

[27] *Id.* at 537, Table 17-12.

[28] *Id.*

[29] The Board notes that each physician attributed pain-related impairment; however, neither physician cited to a section of the A.M.A., *Guides* in support of their determination. To the extent that the physicians relied upon Chapter 18 of the A.M.A., *Guides*, the Office has stated that physicians should not use Chapter 18 to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*. *See Frantz Ghassan*, 57 ECAB 349 (2006); *Linda Beale*, 57 ECAB 429 (2006). Any error in allowing unspecified impairment for pain is harmless since the impairment previously awarded to appellant, 17 percent, is greater than that which Dr. Ghanma and the Office medical adviser calculated using pain impairment.

by Dr. Ghanma and the review by the Office medical adviser do not establish greater impairment.

CONCLUSION

The Board finds that appellant has no more than 17 percent impairment of the right leg for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED that the June 23, 2009 and December 5, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 10, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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