United States Department of Labor
Employees' Compensation Appeals Board

B.W., Appellant	)	
and	)	**Docket No. 10-1041**
	)	**Issued: March 15, 2011**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, West Sacramento, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 5, 2010 appellant filed a timely appeal from the October 23, 2009 and February 4, 2010 schedule award decisions 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 more than six percent impairment to her left lower extremity.

FACTUAL HISTORY

On July 28, 2005 appellant, then a 50-year-old mail handler, injured her left foot when her ankle gave out while she was walking. The Office accepted her claim for plantar fasciitis, left Achilles bursitis and tendinitis of the left foot and ankle. On June 12, 2007 appellant filed a claim for a schedule award.

On July 28, 2005 x-rays of the left ankle and foot revealed no injury or abnormality. A November 6, 2006 magnetic resonance imaging (MRI) scan revealed possible mild Achilles tendinopathy and an osteochondral defect involving the talar dome.

In a May 30, 2007 permanent and stationary report, Dr. Carla I. Docharty, a podiatrist, reviewed the medical history and provided findings on physical examination. Subjective symptoms included slight to moderate pain with standing and/or walking for six hours. Constant moderate pain continued for the remainder of the workday even with self-imposed restrictions of increased sitting. Dr. Docharty diagnosed resolved left foot plantar fasciitis, resolved left ankle Achilles tendinitis and an osteochondral defect of the left ankle. Lower extremity muscle strength was normal. The neurological examination was normal. There was tenderness with palpation over the medial aspect of the left ankle, deltoid ligament area and deep inside the left ankle consistent with osteochondral defect. There was pain with direct dorsal pressure from the heel through the ankle. Bilateral ankle joints had no edema, laxity or instability. Drawer sign was negative. Bilateral range of motion testing revealed ankle dorsiflexion of 15/15 degrees, plantar flexion of 50/50 degrees, inversion of 35/35 degrees and eversion of 15/15 degrees. There was no heel tenderness plantarly or with lateral compression. There was no tarsal tunnel referred pain or pain to palpation of the Achilles tendon insertion. The midtarsal joint had no motion restriction or pain. There was no pain to the sinus tarsi, midtarsal joints or peroneal tendons with palpation or range of motion testing. The peripheral vascular examination was normal. Appellant could perform regular work without restrictions.

On September 9, 2007 Dr. Leonard A. Simpson, an Office medical adviser, reviewed the medical records and found that appellant had six percent left leg impairment due to Grade 3 sensory deficit or pain of the L5 and S1 nerve roots based on Table 16-10 at page 482 and Table 17-37 at page 552. The maximum Grade 3 sensory deficit of 60 percent was multiplied by the 5 percent maximum impairment for the L5 peroneal nerve root to rate 3 percent impairment. The 60 percent sensory deficit was also multiplied by 5 percent for the S1 peroneal nerve root to rate 3 percent impairment under of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*). There was no decreased range of motion or motor impairment.

By decision dated October 25, 2007, the Office granted appellant a schedule award based on six percent left lower extremity impairment for 17.28 weeks, from January 31 to May 31, 2007.[1]

An October 7, 2008 MRI scan of appellant's left ankle revealed osteochondral defect in the talar dome surrounded by a large amount of edema consistent with osteochondritis dissecans. Post-traumatic osteochondral defect or degenerative osteochondral changes could have the same appearance.

On January 20, 2009 a physician found five percent impairment to appellant's left leg due to sensory deficit and muscle weakness.

[1] The Federal Employees' Compensation Act provides for 288 weeks of compensation for 100 percent loss or loss of use of the lower extremity. 5 U.S.C. § 8107(c)(2). Multiplying 288 weeks by six percent equals 17.28 weeks of compensation.

On January 31, 2009 Dr. Simpson noted that the January 20, 2009 report found five percent left lower extremity impairment which was less than the six percent previously awarded to appellant. He found no medical evidence establishing additional impairment.

On March 6, 2009 Dr. Allen Hassan, a family practitioner, stated that appellant had left ankle range of motion impairment, including 25 percent dorsiflexion impairment, 40 percent plantar flexion impairment, 30 percent impairment, each, for inversion and eversion. He opined that the October 7, 2008 MRI scan supported greater impairment than Dr. Simpson found. Dr. Hassan stated that she had constant left ankle pain from standing eight hours a day at work. He found 3 percent impairment for to left ankle pain based on the A.M.A., *Guides* and, based on the 2008 edition of Federal Veterans Laws, Rules and Regulations, 20 percent veterans disability for a moderately severe foot injury and 30 percent disability for irritable colon syndrome caused by pain medications taken for the left ankle pain.

By decisions dated February 10 and July 16, 2009, the Office denied appellant's claim for an additional schedule award.

Appellant requested reconsideration. She asserted that she should be granted an additional schedule award because she was unable to work for several months due to chronic ankle pain and used sick and annual leave. In an August 3, 2009 note, Dr. Sara Dahle, a podiatrist, stated that appellant had chronic left ankle pain following unsuccessful conservative treatment. She noted that an October 7, 2008 MRI scan revealed post-traumatic talar dome osteochondral lesion and edema. Appellant submitted a computer disc with MRI scan views of her left ankle.

By decision dated October 23, 2009, the Office denied modification of the July 16, 2009 decisions.

Appellant requested reconsideration.

By decision dated February 4, 2010, the Office denied modification of the October 23, 2009 decision.

LEGAL PRECEDENT

The schedule award provision of the 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

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[4]

ANALYSIS

Appellant sustained plantar fasciitis, left Achilles bursitis and tendinitis of the left foot and ankle on July 28, 2005 while in the performance of duty. The Office granted her a schedule award based on six percent impairment of the left lower extremity.

The Board finds that the medical evidence does not establish that appellant has more than six percent left leg impairment. On May 30, 2007 Dr. Docharty reviewed the medical history, provided findings on physical examination and diagnosed resolved left foot plantar fasciitis, resolved left ankle Achilles tendinitis and an osteochondral defect of the left ankle. Subjective symptoms included slight to moderate pain with standing and/or walking for six hours. Lower extremity muscle strength was normal. The neurological examination was normal. There was no ankle joint edema, laxity or instability. Ankle range of motion testing was normal. The peripheral vascular examination was normal.

Dr. Simpson reviewed the medical records and found that appellant had six percent left lower extremity impairment. The rating was based on sensory loss of the L5 and S1 nerve roots, for which a maximum of five percent impairment is allowed. Dr. Simpson found Grade 3 sensory deficit or pain based on Table 16-10 at page 482. He multiplied the maximum Grade 3 sensory deficit of 60 percent by the 5 percent maximum impairment for the L5 peroneal nerve root and for the S1 peroneal nerve root to find 3 percent sensory impairment of each nerve under the fifth edition of the A.M.A., *Guides*. There was no decreased range of motion or motor impairment.[5] Dr. Simpson added the sensory loss to total six percent.

Appellant contended that she should be granted an additional schedule award because she was unable to work for several months due to chronic ankle pain and had to use sick and annual leave. A schedule award is compensation for permanent impairment to a member or function of the body.[6] Compensation for lost wages due to the inability to work is a form of compensation based on loss in wage-earning capacity. A schedule award is not based on time lost from work. The fact that she was unable to work for a period of time does not establish additional impairment to her left leg.

On March 6, 2009 Dr. Hassan stated that appellant had left ankle range of motion impairment, including 25 percent dorsiflexion impairment, 40 percent plantar flexion impairment, 30 percent impairment, each, for inversion and eversion. However he provided no

[4] *Id.*

[5] *See* Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

[6] *See* 5 U.S.C. § 8107; *see also Orlando Vivens*, 42 ECAB 303 (1991).

range of motion measurements to support such a finding of range of motion impairment. Dr. Hassan opined that the October 7, 2008 MRI scan supported greater impairment than Dr. Simpson found, but did not explain how the MRI scan established greater than the six percent left leg impairment rated based on sensory nerve loss at L5 and S1. He found three percent impairment due to left ankle pain based on the A.M.A., *Guides* but did not explain his finding with reference to relevant tables. Dr. Hassan found 20 percent veterans disability for a moderately severe foot injury and 30 percent disability for irritable colon syndrome caused by pain medications taken for the left ankle pain based on the 2008 edition of Federal Veterans Laws, Rules and Regulation. The laws and regulations of the Department of Veterans Affairs are not determinative to a claim for a schedule award under the Act. The determination of an employee's right or remedies under other statutory authority does not establish entitlement to benefits under the Act.[7] Due to these deficiencies, Dr. Hassan's report fails to establish that appellant has more than six percent left leg impairment.

Dr. Dahle stated that appellant had chronic left ankle pain following unsuccessful conservative treatment. She noted that an October 7, 2008 MRI scan revealed post-traumatic talar dome osteochondral lesion and edema. Dr. Dahle did not address the issue of impairment. Her report does not establish that appellant has more than six percent left lower extremity impairment.

Regarding the computer disc with MRI scan views of appellant's left ankle, there is no accompanying medical report explaining how the MRI scan findings establish additional left lower extremity impairment.

Appellant failed to establish that she has greater than six percent left lower extremity impairment for which she received a schedule award. The Office properly denied her claim for an additional schedule award.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she had more than six percent impairment to her left lower extremity.

[7] *H.S.*, 58 ECAB 554 (2007).

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2010 and October 23, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 15, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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