

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM E. SMITH and DEPARTMENT OF THE ARMY,
ARMY CORPS OF ENGINEERS, Baltimore, Md.

*Docket No. 97-2470; Submitted on the Record;
Issued May 11, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that he has greater than a 14 percent permanent impairment for loss of use of his left leg, for which he received a schedule award.

On November 21, 1995 appellant, then a 46-year-old laborer, injured his left ankle when he fell to the ground after tripping on some drilling equipment. He underwent ankle surgery and filed a Form CA-1 claim for benefits on the date of injury, which the Office of Workers' Compensation Programs accepted for fractured left ankle and left ankle surgery by letter dated January 18, 1996.

In a report dated March 29, 1996, Dr. William Cook, a specialist in orthopedic surgery who performed ankle surgery on appellant and continued to treat him for his employment-related ankle injury, stated:

“[A] report from his physical therapist says that he continues to make progress and he is enrolled in the Mercy Work Hardening Program for injured employees which will conclude the end of April. Since this is a work-related accident, I have encouraged him to finish that program and based on his exam[ination] today and his x-rays which show good position of the fracture fragments with healed fractures, I will recommend that he return to work on May 1, 1996.”

Dr. Cook subsequently released appellant to return to work on May 1, 1996.

On April 4, 1996 appellant filed a Form CA-7 claim for a schedule award based on partial loss of use of his left leg.

By decision dated May 28, 1996, the Office denied appellant continuing compensation after May 1, 1996 based on Dr. Cook's report releasing him to return to work as of that date.

By letter dated June 11, 1996, appellant's attorney requested reconsideration. In support of his request, appellant's attorney submitted a May 6, 1996 Form CA-20 and May 31, 1996 report from Dr. Cook. The Form CA-20 stated that appellant should continue in his physical therapy program until its completion, and that his disability for work would continue until June 1, 1996. Dr. Cook stated in his May 31, 1996 report that appellant had been participating in a work hardening program since April 26, 1996 and that his return to work had therefore been delayed until his evaluation on the date of the report.

In a decision dated September 14, 1996, the Office granted appellant's request for temporary total disability compensation from May 1 to June 1, 1996 in light of the medical evidence submitted by Dr. Cook.

By decision dated November 18, 1996, the Office denied appellant compensation for a permanent partial impairment award under the schedule. The Office stated that appellant had failed to submit medical evidence in support of his claim.

By letter dated November 27, 1996, appellant's attorney requested an oral hearing. Accompanying the letter was a September 29, 1996 report from Dr. Allen H. Macht, a Board-certified surgeon, who examined appellant and conducted an impairment evaluation of appellant on the date of the report. In his report, Dr. Macht found appellant had hammer toes on the left foot with no eversion in his left foot, and that x-rays revealed a healed bimalleolar fracture of the ankle joint. He noted limitation of motion in appellant's left ankle and stated:

“According to the Fourth Edition of the A.M.A., *Guidelines* [American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition), A.M.A., *Guides*], using Table XLII, [p]age 78, Chapter 3 he has a mild impairment due to loss of dorsiflexion of his left foot and ankle which is a 10 percent impairment of his left foot and ankle. With loss of eversion of his left foot and ankle using [A.M.A., *Guides*] in Table XLIII, [p]age 78, Chapter 3 he has a mild impairment which is a 3 percent impairment of his left foot and ankle. There is residual swelling and thickening of his left ankle. He still walks with a limp favoring his left ankle. He continues to have some pain and discomfort on pressure and use of the left foot and ankle. There is some residual weakness in his left foot and ankle. Taking all of these factors into consideration with [A.M.A., *Guides*], he has a 25 percent permanent ... impairment of his left foot and ankle.”

In a December 3, 1996 memorandum, an Office medical adviser reviewed Dr. Macht's findings and, applying the standards outlined in the A.M.A., *Guides*, determined that appellant had a total 14 percent permanent impairment in his left lower extremity. In arriving at this figure, the Office medical adviser initially calculated that appellant had a 5 percent impairment in his left lower extremity based on 0 degrees eversion in accordance with Table 43, page 78 of the A.M.A., *Guides*; dorsiflexion of minus 10 degrees, which equated to a 7 percent impairment in accordance with Table 42, page 78 of the A.M.A., *Guides*; a 0 percent impairment based on the healed bimalleolar fracture of the ankle joint; and a 2 percent impairment for hammer toes in his left foot in accordance with Table 45, page 78 of the A.M.A., *Guides*. The Office medical

adviser therefore found that, based on the total of the above calculations, appellant had a 14 percent permanent impairment of the left lower extremity.

By decision dated April 15, 1997, the Office reversed its previous decision denying appellant a schedule award in light of appellant's submission of Dr. Macht's September 29, 1996 report and the Office medical adviser's December 3, 1996 finding of a 14 percent permanent impairment of the left lower extremity. An Office hearing representative remanded to the district office.¹

On July 2, 1997 the Office granted appellant a schedule award for a 14 percent permanent impairment of the left leg for the period from September 29, 1996 to July 8, 1997, for a total of 40.32 weeks of compensation.

The Board finds that appellant has no more than a 14 percent permanent impairment of his left leg, for which he has received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ 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 loss of use.⁴ However, neither the Act nor its regulations specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* (fourth edition) have been adopted by the Office for evaluating schedule losses, and the Board has concurred in such adoption.⁵

In the instant case, the Office determined that appellant had a 14 percent permanent impairment of his left upper extremity by adopting the findings of the Office medical adviser, who determined the precise impairment rating by gauging the loss of eversion and dorsiflexion in appellant's left lower extremity, together with the specific numerical impairment caused by hammer toes in his left foot, based on the applicable figures and tables of the A.M.A., *Guides*.

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a 14 percent permanent impairment of the left leg, for which he has received a schedule award from the Office, and that appellant has failed

¹ Appellant's request for an oral hearing was not granted; however, the case file was reviewed by an Office hearing representative.

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

³ 20 C.F.R. § 10.304.

⁴ 5 U.S.C. § 8107(c)(19).

⁵ *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

to provide probative, supportable medical evidence that he has greater than the 14 percent impairment already awarded.

Accordingly, the decision of the Office of Workers' Compensation Programs dated July 2, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 11, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member