U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARITA OLIVER and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

Docket No. 00-1531; Submitted on the Record;
Issued December 10, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained greater than a four percent impairment of her left lower extremity, for which she received a schedule award.

The Office of Workers' Compensation Programs accepted that on October 8, 1994, appellant, then a 32-year-old letter carrier, slipped and fell off the side of some steps, sustaining a left ankle sprain with internal derangement of the left ankle, requiring arthroscopic tenosynovectomy on April 14, 1995, and repeat peroneal synovectomy with excision of an incisional neuroma on September 2, 1997.[1] Following the injury, appellant was off work until June 19, 1995, when she returned to light duty. Appellant continued to have periodic work absences through February 1999, interspersed with periods of sedentary light duty.[2] She received wage-loss compensation on the daily rolls.[3]

Dr. Walter J. Jacobsen, an attending podiatrist, submitted periodic treatment notes from December 1994 through June 1999 and prescribed limited, sedentary duty. In a July 8, 1995 report, Dr. Jacobsen diagnosed left ankle instability, edema, pain, tendinitis and capsulitis. In a June 9, 1997 note, he diagnosed degenerative arthritis of the left ankle. Dr. Jacobsen opined that appellant was permanently partially disabled and required continuing treatment.[4] In an

---

[1] The Board notes that the Office also accepted an arthrodesis of the right foot as causally related to the October 8, 1994 injury. On September 2, 1997 Dr. Jacobsen performed an exostectomy of the first metatarsal cuneiform joint and first cuneiform navicular joint of the right foot, and excision of an unknown soft tissue mass of the right foot. As there is no adverse final decision or schedule award decision of record regarding the accepted right foot injury, the Board will not address that portion of the medical record.

[2] By decision dated January 9, 1997, the Office found that appellant had no loss of wage-earning capacity, as she had been successfully reemployed for six months as a modified letter carrier, "with wages equal to the current grade and step of [her] date of injury job as a regular letter carrier." This decision is not before the Board on the present appeal as it was issued more than one year prior to March 6, 2000, the date appellant filed her appeal with the Board. 20 C.F.R. §§ 501.2(c), 501.3(d)(2)

[3] The Office provided rehabilitation services from December 1994 to mid-1998.

[4] A January 30, 1998 magnetic resonance imaging (MRI) scan of the left ankle showed mild thickening of the

August 5, 1998 letter, he explained that appellant could work in an office setting, but could not work as a "letter carrier due to her pain with standing, walking or carrying packages."

In a November 23, 1998 report, Dr. Armen S. Kelikian, a Board-certified orthopedic surgeon and second opinion physician, provided a history of injury and treatment. On examination, Dr. Kelikian found "[n]umbness in the sural nerve distribution" on the left, with a positive Tinel's sign, and no instability of the left ankle. He opined that appellant had reached maximum medical improvement, and could "work in the mailroom with a standing and alternating sitting job." Dr. Kelikian noted that weight-bearing x-rays of both ankles did not demonstrate any arthritis. In a December 12, 1998 letter, Dr. Kelikian also diagnosed a postoperative incisional neuroma of the left ankle, noting that appellant did not require additional medical treatment.

In a January 6, 1999 addendum, Dr. Kelikian noted reviewing the medical record, and stated that his conclusions were unchanged. He opined that appellant could walk and stand up to two hours each in an eight-hour workday and could push, pull, lift, squat and kneel.

On February 12, 1999 appellant accepted a light-duty job offer as a modified mail clerk, with walking and standing limited to two hours per day respectively.

On March 25, 1999 appellant claimed a schedule award.

By decision dated April 20, 1999, the Office found that appellant had no loss of wage-earning capacity as of February 13, 1999, when she was reemployed as a modified clerk with weekly wages of $685.96 per week, identical to her current pay rate for the date-of-injury position. The Office found that appellant had successfully performed the position for more than 60 days and that it was within her medical restrictions of walking and standing no more than 2 hours per day, with breaks as indicated by Dr. Jacobsen.[5]

In an April 24, 1999 report, Dr. Jacobsen stated that appellant had reached maximum medical improvement as of April 12, 1999. He noted that left ankle inversion was limited to 10 degrees, which "limited squatting. Dr. Jacobsen also noted findings of pain in the toes with prolonged standing and tenderness in the peroneal tendon. He opined that appellant had sustained a 20 percent impairment of the left lower extremity according to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, but did not refer specifically to any page or table or provide his calculations.

On May 13, 1999 the Office referred the medical record to an Office medical adviser for a schedule award calculation. In a May 16, 1999 report, an Office medical adviser reviewed the medical record, and determined that appellant had reached maximum medical improvement as of April 12, 1999. The adviser noted that Dr. Kelikian's November 23, 1998 report indicated injury

---

peroneal retinaculum with minimal soft tissue fibrosis in the surrounding area. On July 30, 1998 nerve conduction velocity (NCV) studies of both lower extremities were within normal limits, including the sensory function of the sural nerves.

[5] Appellant does not appeal this decision. In her request for appeal, appellant addressed only the August 6, 1999 schedule award determination.

to the left sural nerve, with "decreased sensation and a positive Tinel sign." The adviser found that according to Table 68, page 89 of the A.M.A., *Guides*, entitled "Impairments from Nerve Deficits," a Grade 4 dysesthesia in the sural nerve distribution equaled a four percent impairment of the lower extremity. The medical adviser noted that he could not yet perform a schedule award evaluation regarding the right lower extremity, as there was insufficient evidence describing the nature and extent of any permanent impairment or indicating that appellant had reached maximum medical improvement regarding her right foot condition. The adviser commented that Dr. Jacobsen's reports were "unclear and of limited usefulness."

By decision dated August 6, 1999, the Office awarded appellant a schedule award for a four percent impairment of the left lower extremity.[6]

The Board finds that appellant has not established that she sustained greater than a four percent permanent impairment of the left lower extremity.

The schedule award provisions of the Federal Employees' Compensation Act and its implementing regulations[7] 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.[8]

The standards for evaluating the percentage of impairment of extremities under the A.M.A., *Guides* are based primarily on loss of range of motion. In determining the extent of loss of motion, the specific functional impairments, such as loss of flexion or extension, should be itemized and stated in terms of percentage loss of use of the member in accordance with the tables in the A.M.A., *Guides*.[9] Other factors, such as pain, atrophy and weakness, are also considered.

In his May 16, 1999 report, the Office medical adviser determined that appellant had reached maximum medical improvement as of April 12, 1999 and that therefore it was appropriate to assess the percentage of permanent impairment. The adviser found that according to Table 68, page 89 of the A.M.A., *Guides*, entitled "Impairments from Nerve Deficits," a Grade 4 dysesthesia in the sural nerve distribution, as reported by Dr. Kelikian, a Board-certified orthopedic surgeon and second opinion physician, equaled a four percent impairment of the lower extremity.[10] The Board finds that the Office medical adviser's report represents the weight of the medical evidence in this case, as it is sufficiently detailed, refers to specific criteria in the A.M.A., *Guides*, and is based upon a complete and accurate medical history.

---

[6] The award was equivalent to 11.52 weeks of compensation, with the period of the award running from April 12 to July 1, 1999.

[7] 20 C.F.R. § 10.404.

[8] 5 U.S.C. §§ 8107-8109.

[9] *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

[10] The Board notes that Table 68, page 89 indicates that a dysesthesia in the sural nerve distribution equaled up to a 5 percent impairment of the lower extremity. The Office medical adviser opined that the dysesthesia as described in the medical record equaled a four percent impairment out of a possible five.

Appellant contends that the weight of the medical evidence should rest with Dr. Jacobsen, her attending podiatrist, who in an April 24, 1999 report, opined that appellant had sustained a 20 percent impairment of the left lower extremity according to the A.M.A., *Guides*. However, Dr. Jacobsen did not refer specifically to any page or table of the A.M.A., *Guides*, provide his calculation of the proposed 20 percent impairment, or set forth the nature and extent of the elements of impairment used in arriving at the 20 percent figure.[11] Therefore, Dr. Jacobsen's report is of diminished probative value and is insufficient to represent the weight of the medical evidence in this case.[12]

Appellant has not submitted sufficient medical evidence referring to specific tables or grading schemes of the A.M.A., *Guides* indicating that she had greater than a four percent impairment of the left lower extremity. Consequently, the Board finds that the August 6, 1999 schedule award decision was proper under the law and facts of this case.[13]

The decision of the Office of Workers' Compensation Programs dated August 6, 1999 is hereby affirmed.

Dated, Washington, DC
December 10, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

[11] Dr. Jacobsen observed that appellants' left ankle inversion was limited to 10 degrees. However, according to Table 43, page 78 of the A.M.A., *Guides*, entitled "Hindfoot Impairment Estimates," limitation of ankle inversion to 10 degrees would equal only a two percent impairment of the lower extremity.

[12] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

[13] Following the issuance of the August 6, 1999 schedule award determination, appellant submitted additional medical evidence. The Board, however, cannot consider this evidence, since the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office with a formal request for reconsideration; *see* 20 C.F.R. § 501.7(a).