

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOYCE COSTA and U.S. POSTAL SERVICE,  
SOUTH HILLS POST OFFICE, Pittsburgh, PA

*Docket No. 00-1651; Submitted on the Record;  
Issued May 10, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

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

On August 8, 1995 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim alleging that she injured her right foot while delivering the mail. She noted that she was "going down steps and fell over a pair of roller blades that were lying on the ground." The Office of Workers' Compensation Programs accepted the claim for a right ankle strain. Appellant did not miss any time from work but was placed on limited duty.

On December 5, 1995 appellant underwent a magnetic resonance imaging (MRI) scan which revealed: (1) postoperative changes about the distal anterior tibial lip; (2) no definite loose bodies identified; and (3) additional areas of synovitis and/or postoperative change adjacent to the operative site at the distal anterior tibial lip.

In a May 29, 1996 report, Dr. Mitchell H. Rothenberg, a Board-certified orthopedist, noted that appellant had previous problems with her right ankle and then twisted it again at work on August 8, 1995. He related that appellant had undergone physical therapy but it did not alleviate her pain.

Based on Dr. Rothenberg's recommendation, the Office authorized arthroscopic surgery on July 26, 1996. Appellant was off work from July 26 to August 16, 1996 and received appropriate compensation for wage loss. She then returned to limited duty.<sup>1</sup>

On December 24, 1998 appellant filed a claim for a schedule award.

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<sup>1</sup> Appellant accepted a reassignment to a position as a carrier technician effective April 11, 1998. On June 18, 1998 the Office determined that the position of a carrier technician fairly and reasonably represented appellant's wage-earning capacity. The Office therefore terminated appellant's compensation on the grounds that her actual wages met or exceeded the wages of the job she held when she was injured.

On February 3, 1999 appellant was seen for an initial physical therapy evaluation. The objective findings were stated by the physical therapist:

“[Appellant’s] gait pattern appears antalgic on the right. After examining her shoes, no significant abnormal wear patterns were noted. She presently is just using a soft insole in both shoes. She stands with genuvalgus and pes planus bilaterally. Ankle ROM [range of motion]: Dorsiflexion left 10 degrees, right neutral; plantar flexion left 40 degrees, right 40 degrees; great toe extension limited to 30 degrees bilaterally. She had tenderness over the right Achilles tendon insertion and lateral ankle ligaments. She was not tender over the plantar fascia today. Ankle strength graded 4/5 with muscle testing with patient giving way. She was unable to heel walk or toe walk.”

On June 17, 1999 Dr. Rothenberg referred appellant for a functional capacity evaluation (FCE) with Laura K. Ebbert, an occupational therapist, who noted that appellant reported functional deficits including difficulty with prolonged walking, standing and repetitive stair climbing. On physical examination, active range of motion of the right ankle showed plantar flexion 40 degrees, dorsiflexion negative (-) 15 degrees, inversion 12 degrees, eversion 12 degrees, strength of the right ankle with dorsiflexion 3+/5, plantar flexion 3+/5, inversion 3/5, eversion 3/5; no signs of edema, and decreased (gait) stance phase on right secondary to complaints of pain.

Ms. Ebbert reported a summary of diagnosis revealing “decreased right ankle range of motion and strength, and an antalgic gait pattern.” She indicated that appellant was placed in the low end of the medium physical demand category with limited tolerance for standing and walking to only on occasional basis.<sup>2</sup> Ms. Ebbert further rated appellant’s total body impairment as 13 percent based on range of motion and weakness deficits in the right ankle.

The Office referred a copy of the medical record and the FCE report to an Office medical adviser to rate impairment of appellant’s right leg under the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

On October 18, 1999 an Office medical adviser compared the active range of motion findings on the FCE with Table 42 and 43, page 78 of the A.M.A., *Guides* and determined that appellant had a 2 percent impairment related to inversion of 12 degrees. He stated:

“I cannot agree that manual muscle testing was 3/4 Grade. This is not compatible with walking, even with a modified job. Also the [February 3, 1999] evaluation found 4/5 Grade. The weakness was also attributed to decondition. The gait disturbance, antalgic gait-decreased stance phase is only seven [percent].... Since the manual muscle testing has discrepancies, as well as not reaching maximum

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<sup>2</sup> It was noted that on a motorized treadmill appellant was able to ambulate at a comfortable gait speed for 20 minutes on a 0 percent grade. Ms. Ebbert stated: “This assessment was terminated at four minutes secondary to [appellant’s] request due to increased pain/symptoms in the right ankle. Physiological signs were not within normal limits, as there were signs of generalized deconditioning.”

medical improvement -- strengthening exercise, I used Table 36 [page] 76 with the loss for range of motion.”

The Office medical adviser further noted that Table 37 could not be used with Table 36 according to FECA Bulletin 95-17. He rated appellant’s permanent impairment of the right leg as nine percent. The date of medical improvement was listed as June 17, 1999.

In a decision dated February 11, 2000, the Office issued a schedule award for a nine percent permanent impairment of the right leg.

The Board finds that appellant has failed to establish that she has more than a nine percent permanent impairment of her right lower extremity.

Under section 8107 of the Federal Employees’ Compensation Act<sup>3</sup> and section 10.404 of the implementing federal regulations,<sup>4</sup> schedule awards are payable for the permanent impairment of specified body members, functions and organs. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.<sup>5</sup> However, neither the Act nor the regulations specify the method by which the percentage of impairment shall be determined.<sup>6</sup> The method used in making such determinations rests in the sound discretion of the Office.<sup>7</sup> For consistent results and to ensure equal justice for all claimants, the Office has adopted and the Board has approved, the use of the appropriate edition of the A.M.A., *Guides* as the uniform standard applicable to all claimants for determining the percentage of permanent impairment.<sup>8</sup>

Appellant’s FCE indicated that she had 13 percent total body impairment based on her right ankle injury. However, the rating given by the physical therapist is not relevant because she is not a qualified physician under the Act, and she did not properly reference the fourth edition of the A.M.A., *Guides*. When the record contains a medical report with physical findings, the Office may refer the report to an Office medical adviser for review of the physical findings and an impairment rating for purposes of issuing a schedule award.<sup>9</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> 5 U.S.C. § 8107(c)(19).

<sup>6</sup> *A. George Lampo*, 45 ECAB 441, 443 (1994).

<sup>7</sup> *George E. Williams*, 44 ECAB 530, 532 (1993).

<sup>8</sup> *James J. Hjort*, 45 ECAB 595, 599 (1994).

<sup>9</sup> It is well settled that, when an attending physician’s report gives an estimate of permanent impairment but does not indicate that the estimate is based on the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*. Board cases are clear that if an attending physician does not utilize the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment. *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *see Thomas P. Gauthier*, 34 ECAB 1060 (1983); *Ronald J. Pavlik* 33 ECAB 1596 (1982).

In this case, the Office medical adviser properly noted discrepancies in the values obtained for manual muscle testing and found that impairment estimates could not be made under section 3.2d, page 76. Instead, the Office medical adviser considered appellant's impairment in conjunction with gait derangement and loss of range of motion. He stated that appellant's antalgic gait with decreased stance was rated at 7 percent under Table 36, page 76. He further noted that appellant has a 2 percent impairment related to inversion of 12 degrees, under the section pertaining to measurements for range of motion, Table 42 and 43, page 78 of the A.M.A., *Guides*. Using the combined tables, the Office medical adviser concluded that appellant had a nine percent impairment of the right leg due to her work injury.

The Board finds the opinion of the Office medical adviser to be sufficiently rationalized and based on a proper application of the physical findings to the A.M.A., *Guides*. Therefore, the Board concludes that the Office properly issued a schedule award for a nine percent permanent impairment of the right lower extremity.

The decision of the Office of Workers' Compensation Programs dated February 11, 2000 is hereby affirmed.

Dated, Washington, DC  
May 10, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member