

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS A. SHEEDY and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 00-1958; Submitted on the Record;
Issued November 27, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained more than a 24 percent impairment to the right lower extremity for which he has received a schedule award.

On November 1, 1982 the Office of Workers' Compensation Programs accepted appellant's claim for a right foot injury, finding that his hallux limitus of the first metacarpophalangeal joint (MPJ) of the right foot was causally related to a fall sustained on February 6, 1981.

The Office, in an October 14, 1992 statement of accepted facts, noted that appellant had right MPJ osteotomy and arthroplastic repair on December 1, 1981, right MPJ arthroplasty and total implant insertion and distal interphalangeal joint arthroplasty, right second digit, on July 25, 1990. The Office also stated that appellant had surgery on February 27, 1991, including a "partial metatarsal head resection [of the] second metatarsal, dorsiflexory V[algus] osteotomy [of the] third metatarsal, arthroplasty of the interphalangeal joints of the second and third toes with k-wire fixation [of the] right foot. The claimant received orthopedic shoes and orthotics." Appellant's cellulitis and metatarsalgia were also accepted as well as his tarsal tunnel syndrome.

On October 15, 1992 the Office authorized tarsal tunnel release surgery.

Appellant received appropriate benefits and, on December 23, 1996, filed a claim for a schedule award.

By decision dated October 21, 1997, the Office granted appellant a 24 percent schedule award for impairment of the right leg.¹ By letter dated November 4, 1997, appellant, through counsel, requested an oral hearing. A hearing was held and the hearing representative, by

¹ The Office medical adviser relied on a June 25, 1997 report from Dr. Steven M. Allon who made findings based on range of motion tests but who failed to correlate these findings with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

decision dated February 9, 1999 and finalized on February 10, 1999, remanded the case for referral to an impartial medical examiner for resolution of a conflict in medical opinion.²

On April 7, 1999 the Office referred appellant to Dr. Andrew J. Collier, a Board-certified orthopedic surgeon, for an impartial medical examination to determine appellant's right leg impairment. The Office included a February 17, 1999 statement of accepted facts, that referred only to appellant's work-related February 6, 1981 hallux limitus condition and his December 1, 1981 surgery. The Office noted that appellant has not returned to work since 1990.

In a medical report dated May 5, 1999, Dr. Collier found that appellant sustained a 7 percent impairment of the right lower extremity. In a note dated June 10, 1999, the claims examiner referred Dr. Collier's report to the Office medical adviser indicating that "This is a remand due tomorrow -- any help you can give me will [b]e much appreciated." The Office medical adviser replied: "Total award calculation 7 percent -- used A.M.A., *Guides*, (4th ed. 1993). No additional."

By decision dated June 10, 1999, the Office denied appellant's claim for an additional schedule award.

By letter dated June 14, 1999, appellant requested an oral hearing. A hearing was held on November 16, 1999; appellant was represented by counsel.

By decision dated and finalized on February 2, 2000, the hearing representative affirmed the Office's June 10, 1999 decision denying additional schedule award.

The Board has duly reviewed the case record in this appeal and finds that this case is not in posture for decision.

The schedule award provisions of the Federal Employees' Compensation Act³ set forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office.⁴ To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants, by regulation of 20 C.F.R. § 10.404 (1999), the Office has adopted the A.M.A., *Guides* (4th ed. 1993) as the standards to apply in evaluating schedule awards.

In this case, the Office referred this case to an impartial medical examiner with an inaccurate statement of accepted facts. The February 17, 1999 statement of accepted facts referred to appellant's work-related February 6, 1981 hallux limitus condition and his

² In an April 22, 1998 report, Dr. Ronald John Potash recommended a 38 percent impairment for appellant's right lower extremity.

³ 5 U.S.C. § 8107

⁴ *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

December 1, 1981 surgery. However, the statement failed to note appellant's additional right MPJ arthroscopy, implant insertion and joint arthroscopy, metatarsal head resection, dorsiflexory valgus osteotomy and arthroplasty of the interphalangeal joints with k-wire right foot fixation. The Office did not advise that appellant was authorized orthopedic shoes and orthotics and that his work-related injuries also included cellulitis, metatarsalgia and tarsal tunnel syndrome for which the Office authorized surgery. When an impartial medical examiner renders a medical opinion based on an incomplete or inaccurate statement of accepted facts, the probative value of the opinion is seriously diminished or negated altogether.⁵ The Board finds, therefore, that the Office failed to properly develop the case record with respect to appellant's claim for a schedule award.

Similarly, the Office medical adviser did not discuss the A.M.A., *Guides* or provide any rationale for his calculations as to appellant's permanent impairment rating. The Office medical adviser summarily adopted Dr. Collier's findings of 7 percent impairment in the right lower extremity. Because the Office medical adviser failed to discuss Dr. Collier's findings in relation to the A.M.A., *Guides*, the Board is unable to make an informed determination of the propriety of appellant's schedule award.

The case, therefore, is remanded for further development and evaluation of appellant's permanent impairment under the A.M.A., *Guides*. On remand, the Office shall provide a complete statement of accepted facts to Dr. Collier for an impairment evaluation. Thereafter, the Office shall issue a *de novo* decision regarding appellant's entitlement to a schedule award.

Consequently, the decisions of the Office of Workers' Compensation Programs dated February 2, 2000 and June 10, 1999 are hereby set aside and the case is remanded to the Office for further development in accordance with this decision.

Dated, Washington, DC
November 27, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁵ Federal (FECA) Procedure Manual, Part 2 -- *Claims, Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *see also James A. Wyrich*, 31 ECAB 1805 (1980).