

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JANIE M. STEWART and U.S. POSTAL SERVICE,  
POST OFFICE, Encino, CA

*Docket No. 01-1220; Submitted on the Record;  
Issued January 22, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a three percent permanent impairment to her left lower extremity for which she received a schedule award

On January 24, 1995 appellant, then a 56-year-old mail carrier, filed a traumatic injury claim alleging that she sprained her left ankle while stepping off a curb to get to her postal vehicle on January 23, 1995. The Office of Workers' Compensation Programs accepted the claim for left ankle sprain and authorized surgery.

On October 3, 1997 the Office issued a schedule award for a three percent permanent impairment of appellant's left lower extremity.

Appellant requested an oral hearing by letter dated October 20, 1997 and a hearing was held on May 11, 1998.

In a decision dated June 23, 1998, the hearing representative affirmed the Office's October 3, 1997 schedule award decision.

In a report dated February 25, 2000, Jonathan S. Jaivan, an attending Board-certified orthopedic surgeon, noted physical findings of 20 degrees dorsiflexion, 40 degrees plantar flexion, 30 degrees inversion and 20 degrees eversion in the left ankle. He indicated that appellant had "minimal intermittent left ankle pain with standing and walking increasing to moderate frequent discomfort with prolonged standing and walking."

On January 24, 2000 appellant filed a claim for an additional schedule award.

In a July 9, 2000 report, Dr. Leonard A. Simpson, an Office medical adviser, found that appellant reached maximum medical improvement on June 18, 1996 and sustained a three percent left lower extremity impairment. Based on Dr. Jaivan's reports and Tables 11, 42 and 43

of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>1</sup> Dr. Simpson determined that appellant had a 3 percent left lower extremity impairment due to pain with 0 percent for no atrophy or weakness, 0 percent for 40 degrees plantar flexion and 20 degrees dorsiflexion and 0 degrees full subtalar motion. He combined those losses for a three percent total permanent impairment rating.

By decision dated February 22, 2001, the Office denied appellant's request for an additional schedule award.

The Board finds that the Office erred in calculating appellant's additional impairment, and that the case must be remanded to the Office for a proper calculation.

Section 8107 of the Federal Employees' Compensation Act<sup>2</sup> provides that, if there is permanent disability involving the loss or loss of use of a specific enumerated member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>3</sup> The Act does not specify the manner by which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>4</sup> Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.<sup>5</sup>

In the present case, the Office claims examiner referred the case to Dr. Simpson, the Office medical advisor for computation of percentage of impairment of appellant's left lower extremity based on the clinical findings of Dr. Jaivan, an attending Board-certified orthopedic surgeon. In calculating his permanent impairment findings, it appears that Dr. Simpson relied on the tables in the fourth edition of the A.M.A., *Guides*. As of February 1, 2001, however, it is the fifth edition of the A.M.A., *Guides* that is to be used in the evaluation of schedule awards.<sup>6</sup> Consequently, the Office should direct Dr. Gordon to provide permanent impairment ratings based on the fifth edition of the A.M.A., *Guides*. Following such further development as it deems necessary, the Office should issue a *de novo* decision.

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<sup>1</sup> A.M.A., *Guides*, 48, 78.

<sup>2</sup> 5 U.S.C. §§ 8101-8193; § 8107.

<sup>3</sup> *Id.* This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>4</sup> *Mary L. Henninger*, 51 ECAB \_\_\_\_\_ (Docket No. 00-552, issued June 20, 2001); 20 C.F.R. § 10.404 (1999). The Office first utilized *A Guide to the Evaluation of Permanent Impairment of the Extremities and Back*, published in The Journal of the American Medical Association, Special Edition, February 15, 1958. From 1958 until 1971 a series of 13 *Guides* was published in the Journal of the American Medical Association. The American Medical Association published the first hardbound compilation edition of the A.M.A., *Guides* in 1971, which revised the previous series of A.M.A., *Guides*.

<sup>5</sup> See Federal (FECA) Bulletin 01-5.

<sup>6</sup> See FECA Bulletin No. 01-5, issued January 29, 2001.

The February 22, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further proceeding consistent with the above opinion.

Dated, Washington, DC  
January 22, 2002

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member