U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUISE W. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, St. Petersburg, FL

Docket No. 03-1019; Submitted on the Record;
Issued October 9, 2003

DECISION and ORDER

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

The issue is whether appellant has more than a four percent impairment of each foot for which she received a schedule award.

On November 12, 1996 appellant, then a 45-year-old letter carrier, filed a claim for compensation alleging that her bilateral heel spurs were a result of walking routes for seven years, as well as standing and lifting continuously on the job. The Office of Workers' Compensation Programs accepted her claim for bilateral heel spurs and authorized surgery. Appellant received compensation for wage loss.

On June 27, 1997 appellant underwent an endoscopic plantar fasciotomy on the left foot. Dr. Loren J. Miller, a podiatric surgeon, reported on October 28, 1997 that appellant had reached maximum medical improvement regarding her left foot and heel. On November 8, 2001 he repeated that the left foot had reached maximum medical improvement but that the right foot had not. Both feet still had heel spurs and plantar fasciitis.

On January 10, 2002 appellant filed a claim for a schedule award. She later submitted a May 15, 2002 notation from Dr. Miller reporting that her right foot and heel had reached maximum medical improvement. The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Michael D. Slomka, a Board-certified orthopedic surgeon, for an evaluation of permanent impairment.

On June 18, 2002 Dr. Slomka related appellant's history and symptoms. He described his findings on physical examination and the results of an x-ray taken of the right heel. He diagnosed bilateral plantar fasciitis and heel spurs causally related to repetitive, prolonged walking in appellant's federal employment. Appellant's condition was permanent, he reported, and she had a permanent impairment of three percent for each lower extremity.

In a supplemental report dated October 17, 2002, Dr. Slomka stated that a lower extremity impairment of three percent would convert to a four percent impairment of each foot.

He noted that the date of maximum medical improvement was June 18, 2002, the date of appellant's examination.

On November 22, 2002 an Office medical adviser reviewed Dr. Slomka's evaluation and determined that his rating of four percent for pain due to bilateral heel spurs was within the bounds of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* 552, Table 17-37 (5th ed. 2001). On December 5, 2002 a second Office medical adviser explained that pain secondary to a medial plantar nerve involvement could represent as much as a seven percent impairment of the foot, so Dr. Slomka's rating was acceptable.

On December 16, 2002 the Office issued a schedule award for a 4 percent permanent impairment of each foot, or 16.40 weeks of compensation from December 1, 2002 to March 25, 2003.

Appellant appealed the Office's December 16, 2002 decision to the Board on March 1, 2003. She argued that her compensation or period of award should be greater "since my left foot reached maximum medical improvement in November 1997. My right foot reached maximum medical improvement in May of 2002."[1]

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

Section 8107 of the Federal Employees' Compensation Act authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body.[2] Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.[3]

Chapter 17.1 of the fifth edition of the A.M.A., *Guides* discusses principles of assessment:

> "The evaluation should include a comprehensive, accurate medical history; a review of all pertinent records; a comprehensive description of the individual's current symptoms and their relationship to daily activities; a careful and thorough physical examination; and all findings of relevant laboratory, radiologic (imaging) and ancillary tests. It is also essential that the rater include in the report a description of how the impairment was calculated. Because many ratings are reviewed of by other physicians and third-party administrators, the explanation of

[1] On June 10, 2003, while her case was on appeal, appellant filed a new claim for compensation alleging that her left tarsal tunnel syndrome was a result of her federal employment. She also filed a claim for an additional schedule award and submitted medical evidence that the entrapment of the posterior tibial nerve on the left would qualify her for a 10-percent impairment of that lower extremity. None of these matters are before the Board on this appeal. 20 C.F. R. § 501.2(c) (the Board has jurisdiction to consider and decide appeals from final decisions of the Office).

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

the calculation will lead to a better understanding of the method used and report will be considered more reliable."[4]

The Office's procedure manual also provides that, to support a schedule award, the file must contain competent medical evidence that describes the impairment in sufficient detail for the claims examiner to visualize the character and degree of disability.[5]

The Office based appellant's schedule award on the reports of Dr. Slomka. In his June 18, 2002 report, Dr. Slomka stated: "She has an impairment of three percent related to the right lower extremity and three percent related to the left lower extremity and the continued medical restrictions are as noted above, that is, mostly seated work with very little walking." He made no reference to the A.M.A., *Guides* and gave no clue as to how he calculated appellant's impairment. It is impossible to determine from this report whether Dr. Slomka properly followed the criteria set forth in the A.M.A., *Guides*.

An Office medical adviser reviewed Dr. Slomka's report. Using Table 17-37, page 552, the Office medical adviser reasoned that Dr. Slomka's rating of four percent was acceptable because the maximum foot impairment due to a sensory deficit of the medial plantar nerve was seven percent. That Dr. Slomka's rating happens to fall within a permissible range does not confirm that he followed the protocols of the A.M.A., *Guides*.

Sensory impairments can be rated using Tables 17-37 and 16-10.[6] Table 17-37 shows that the maximum foot impairment due to a sensory deficit of the medial plantar nerve is indeed seven percent, but more is required under the A.M.A., *Guides*. The physician must follow the procedure and grading scheme set out in Table 16-10, page 482.[7] He must grade the severity of the sensory deficit or pain according to the classifications given and he must use clinical judgment to select the appropriate percentage from the range of values shown for each severity grade. The physician must then multiply the severity of the sensory deficit by the maximum foot impairment value to obtain the foot impairment for each nerve structure involved.

The December 5, 2002 report of the second Office medical adviser does not offer an acceptable basis for appellant's rating.[8] The Board will set aside the Office's December 16, 2002 schedule award decision and remand the case for an evaluation of impairment that is consistent with the criteria set forth in the A.M.A., *Guides*, an evaluation that describes the impairment in sufficient detail for a reviewer to visualize the character and degree of disability, and one that includes a complete description of how the impairment was calculated. After such

[4] A.M.A., *Guides* 524.

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.b(2) (March 1995).

[6] A.M.A., *Guides* 552, Example 17-17.

[7] *Id.* at 550 (partial sensory and motor deficits should be rated as in the upper extremity, using Tables 16-10 and 16-11).

[8] The medical adviser incorrectly reported that pain does not have to be graded under Table 17-37.

further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for a schedule award.

For entitlement to a schedule award, the medical evidence must first establish that the claimant has reached maximum medical improvement, meaning that the physical condition of the injured member has stabilized and will not improve further.[9] Only at that point is her condition considered to be permanent. The Act compensates permanent impairment by paying a specific number of weeks of compensation. The compensation schedule specifies a maximum of 205 weeks of compensation payable for the total loss of a foot, as would occur with amputation.[10] The schedule compensates partial loss at a proportionate rate.[11] Thus, compensation for a 4 percent impairment of each foot is 4 percent of 205 weeks (8.2 weeks) times 2, or 16.4 weeks of compensation. This is so regardless of whether the date of maximum medical improvement was October 28, 1997 or May 15 or June 18, 2002. The date of maximum medical improvement may determine when those weeks of compensation begin to run,[12] but the actual amount of the schedule award, the number of weeks of compensation that will be paid for the impairment, remains the same.

[9] *Adela Hernandez-Piris*, 35 ECAB 839 (1984).

[10] 5 U.S.C. § 8107(c)(4).

[11] *Id*. at § 8107(c)(19).

[12] The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury. The determination of the date of maximum improvement is factual in nature and depends primarily on the medical evidence. *Franklin L. Armfield*, 28 ECAB 445 (1977). For schedule award purposes maximum medical improvement should not be fixed at some distant time in the past on a date that was prior to the time that the employee was able to return to work on a regular basis, unless the evidence clearly and convincingly establishes that maximum improvement had in fact been reached by that date and unless the employee's rights under 5 U.S.C. § 8116(a) can be fully protected. *Marie J. Born*, 27 ECAB 623, 631 (1976). If the date of maximum improvement is to be fixed at a distant past date, such as a year previously, while the employee was still disabled (and therefore usually entitled to compensation for temporary disability), the rules for determining the date of maximum improvement remain the same as in all other situations; however, in such a situation the type of evidence needed to support the retroactive finding of fact, adverse to the employee's best interest, must be stronger than that which might otherwise be sufficient. *Marie J. Born*, 28 ECAB 89, 93 (1976) (granting petition for reconsideration and reaffirming the Board's decision).

The December 16, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
October 9, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member