

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LENA E. EDWARDS and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 03-1341; Submitted on the Record;
Issued September 4, 2003*

DECISION and ORDER

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

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

On December 15, 1999 appellant, then a 51-year-old flat sorter clerk, filed a notice of traumatic injury alleging that she was hurt on December 15, 1999 when a metal brake rod broke off a cart she was pushing and hit her right fifth toe. The Office of Workers' Compensation Programs accepted the claim for a contusion and fracture of the right fifth toe and an unspecified injury to the right lower leg. The Office authorized appellant to undergo surgery to remove a bony fragment of the right fifth toe on May 22, 2001. Appellant stopped work on the date of injury and received disability compensation until she was approved for regular duty effective November 26, 2001.

On August 8, 2002 appellant filed a Form CA-7 claim for a schedule award. In an October 10, 2002 letter, Dr. Louis Aquino, appellant's podiatrist, noted that appellant was seen on October 8, 2002, at which time she described tenderness on palpation of the right little toe and related that it was difficult for her to wear certain types of shoes for long periods of time. Dr. Aquino indicated that appellant was at maximum medical improvement and opined that she had approximately less than five percent impairment.

On December 10, 2002 the Office forwarded a copy of Dr. Aquino's letter and the medical record to an Office medical adviser for review and calculation of the degree of appellant's permanent partial impairment of the right lower extremity. In a report dated December 21, 2002, an Office medical adviser noted that as of October 8, 2002 appellant continued to complain of mild pain. He also noted that appellant had complained of decreased

sensation over the toe.¹ The Office medical adviser concluded that appellant reached maximum medical improvement on November 20, 2001 when she was approved for work without restrictions. He opined that appellant had a one percent permanent impairment of the right lower extremity due to her work injury.

In a decision dated April 4, 2003, the Office issued a schedule award for a one percent permanent impairment of the right lower extremity. The period of the award was from November 26 to 27, 2001.

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

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, function and organs of the body.² The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (fifth edition 2001).⁴

In this case, because Dr. Aquino did not reference the A.M.A., *Guides* in calculating appellant's impairment rating, the Office properly had an Office medical adviser review the medical record to ascertain the degree of permanent impairment for the right lower extremity. The Office medical adviser first estimated that appellant had a 50 percent sensory deficit for continued pain and decreased sensation as described under Grade 3 at Table 16-10, page 482. He also determined that appellant's maximum lower extremity impairment due to sensory deficit in the distribution of the sural nerve equated to two percent under Table 17-37, page 552.

The A.M.A., *Guides* (fifth edition 2001), state at section 17.21, page 550, that partial sensory and motor deficits should be rated as in the upper extremity (Tables 16-10 and 16-11). Once the examiner has graded the severity of sensory and motor deficits and identified the proper percentages under Tables 16-10 and/or 16-11, those percentages are to be combined. The examiner is then directed to identify the injured nerve and find the maximum allowed for the lower extremity at Table 17-37. Thereafter, the percentages are to be multiplied for calculation of the degree of permanent impairment of the lower extremity as demonstrated in example 17-

¹ The record contains an October 23, 2001 report from Dr. Stephen Smith, a Board-certified anesthesiologist, who saw appellant in consultation with Dr. Aquino for pain management. Dr. Smith indicated that appellant complained of decreased sensation to touch over the medial aspect of the toe and decreased sensation to pinprick throughout the toe.

² The Act provides that, for a total, or 100 percent loss of use of a leg, an employee shall receive 288 weeks of compensation. 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.404 (1999).

⁴ FECA Bulletin No. 01-05 (January 29, 2001).

17, page 552. In this case, the Office medical adviser did not identify any motor deficit so Table 16-11 is not applicable. The Board finds that the Office medical adviser properly determined that appellant has a 50 percent impairment for continued pain and decreased sensation of the right fifth toe as described at Table 16-10, and a two percent impairment for injury to the sural nerve at Table 17-37. When those percentages are multiplied, the result is a 1 percent impairment (50 percent x 2 percent = 1 percent). Thus, the Board concludes that appellant properly received a schedule award for a one percent impairment of the right lower extremity.

The April 4, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 4, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member