U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID R. EDWARDS and U.S. POSTAL SERVICE,
POST OFFICE, Oakland Park, FL

Docket No. 03-1652; Submitted on the Record;
Issued September 25, 2003

DECISION and ORDER

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

The issue is whether appellant has any permanent impairment of his left foot entitling him to a schedule award.

Appellant, a 57-year-old city carrier, filed a notice of traumatic injury on January 18, 2001 alleging that on January 10, 2001 he developed pain in his left foot while walking and delivering mail in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for left foot strain/sprain.

Appellant's attending physician, Dr. Graham F. Whitfield, an orthopedic surgeon, completed a report on February 28, 2002 diagnosing metatarsalgia left foot with plantar fasciitis and concluding that appellant reached maximum medical improvement on December 13, 2001. Appellant requested a schedule award on March 20, 2002. The Office medical adviser reviewed Dr. Whitfield's reports on June 21, 2002 and found that he had not submitted sufficient detailed evidence of an impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment.*[1] The Office referred appellant for a second opinion evaluation with Dr. David Lotman, a Board-certified orthopedic surgeon. In a report dated November 20, 2002, Dr. Lotman noted appellant's history of injury and provided findings on physical examination. He concluded that appellant had not yet reached maximum medical improvement and recommended additional treatment.

By decision dated December 2, 2002, the Office denied appellant's claim for a schedule award finding that he had not yet reached maximum medical improvement and that his physical impairment was not severe enough to be ratable under the A.M.A., *Guides*. Appellant requested reconsideration of this decision on February 24, 2003 and submitted an additional report from Dr. Whitfield dated December 19, 2002 opining that appellant had reached maximum medical improvement and providing specific references to the A.M.A., *Guides*. The Office medical

[1] A.M.A., *Guides* (5th ed. 2000).

adviser reviewed this report on March 14, 2003 and found that Dr. Lotman had found no loss of range of motion and that due to the discrepancies in physical findings, appellant had not established an impairment in accordance with the A.M.A., *Guides*. By decision dated April 8, 2003, the Office denied modification of its December 2, 2002 decision.

The Board finds that this case is not in posture for decision due to an unresolved conflict of medical opinion evidence.

The schedule award provisions of the Federal Employees' Compensation Act[2] and its implementing regulation[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Appellant's attending physician, Dr. Whitfield, an orthopedic surgeon, completed a report on February 28, 2002 and opined that appellant had reached maximum medical improvement on December 13, 2001. He stated that appellant continued to experience some pain in his foot after prolonged standing or walking. Dr. Whitfield diagnosed metatarsalgia left foot with plantar fasciitis. He listed appellant's physical findings as some tenderness to palpation and decreased sensation to pinprick in the left foot and left leg. Dr. Whitfield provided appellant's range of motion for his left ankle noting 0 degrees of dorsiflexion, plantar flexion of 45 degrees, inversion of 20 degrees and eversion of 20 degrees.

The second opinion physician, Dr. Lotman, a Board-certified orthopedic surgeon, examined appellant's left foot on November 20, 2002 and found slight tenderness under the fourth and fifth metatarsal heads as well as full range of motion of the ankle and normal motion without pain on stress of the hind foot, forefoot and midfoot. Dr. Lotman stated that he found no clear objective physical findings. He opined that maximum medical improvement had not occurred and recommended a three-week trial of a metatarsal bar applied to the outside of his shoe.[4]

On reconsideration, Dr. Whitfield again noted that appellant had reached maximum medical improvement and provided appellant's range-of-motion findings on May 22 and December 10, 2002. In his December 10, 2002 report, Dr. Whitfield found that appellant had 0 degrees of dorsiflexion, 50 degrees of plantar flexion, 25 degrees of inversion, 15 degrees of

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] A schedule award is appropriate where the physical condition of an injured member has stabilized, despite the possibility of an eventual change in the degree of functional impairment in the member. The question of when maximum medical improvement has been reached is a factual one which depends on the medical findings in the record and the determination of such date is made in each case upon the basis of submitted medical evidence. *Eugenia L. Smith*, 41 ECAB 409, 413 (1990).

eversion, great toe extension of 20 degrees of the metatarsophalangeal joint and second toe extension of 40 degrees. He concluded that 0 degrees of dorsiflexion was a ratable impairment under the A.M.A., *Guides* as was great toe extension of 20 degrees. Dr. Whitfield provided his rating impairment in terms of the whole person, finding that appellant had a 4 percent impairment of the whole person. The Act does not provide for impairment to the whole person, rather only to the scheduled members. The Board notes that, in accordance with the A.M.A., *Guides* and the Act, great toe extension of 20 degrees is 3 percent impairment of the foot,[5] and ankle extension of 0 degrees is a 10 percent impairment of the foot.[6]

Due to the disagreement between appellant's attending physician, Dr. Whitfield, an orthopedic surgeon, who found that appellant had reached maximum medical improvement and that he had permanent impairment of loss of range of motion and the Office referral physician, Dr. Lotman, a Board-certified orthopedic surgeon, who found that appellant had not reached maximum medical improvement and had no loss of range of motion, the Board finds, there is an unresolved conflict of the medical opinion evidence. Section 8123(a) of the Act,[7] provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." On remand, the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate Board-certified physician, to determine if he has reached maximum medical improvement and, if so, whether he has any permanent impairment as a result of his accepted employment injury entitling him to a schedule award. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

[5] A.M.A., *Guides*, 537, Table 17-14.

[6] *Id*. at 537, Table 17-11.

[7] 5 U.S.C. §§ 8101-8193, 8123(a).

The decision of the Office of Workers' Compensation Programs dated December 2, 2002 is hereby affirmed. The April 8, 2003 decision is hereby set aside and remanded for further development of this decision of the Board.

Dated, Washington, DC
September 25, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member