

**United States Department of Labor
Employees' Compensation Appeals Board**

HAZEL E. MERCER, Appellant

and

DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Chillicothe, OH, Employer

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Docket No. 04-956
Issued: November 23, 2004

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On March 1, 2004 appellant's counsel filed a timely appeal from the Office of Workers' Compensation Programs' merit schedule award decision dated February 10, 2004, finding that she had no more than a seven percent permanent impairment of the right foot and a seven percent impairment of the left foot. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award issue.

ISSUE

The issue is whether appellant has greater than a seven percent impairment of the right foot and greater than seven percent impairment of the left foot, for which she received a schedule award for 28.68 weeks.

FACTUAL HISTORY

On May 13, 1991 appellant, a 50-year-old medical file clerk, filed an occupational disease claim alleging that her plantar fasciitis was due to her employment. The Office accepted

the claim for aggravation of bilateral plantar fasciitis and paid compensation for intermittent wage loss for the period December 1, 1989 through March 1, 1991.¹ The Office authorized custom-molded orthotic devices on March 20, 2002.

On May 16, 1994 the Office issued appellant a schedule award for a seven percent permanent impairment of the left foot and a seven percent impairment of her right foot. The period of the award was for 28.68 weeks and ran from December 28, 1993 to July 17, 1994.

By merit decision dated October 23, 2001, the Office denied appellant's claim for an additional schedule award on the grounds that the evidence of record was insufficient to establish that she was entitled to a greater than seven percent impairment for the left foot and a seven percent impairment of the right foot.

By merit decision dated December 31, 2002, the Office denied appellant's request for modification.

In a letter dated November 27, 2003, appellant's counsel requested reconsideration. Appellant contended that the Office issued her a schedule award for seven percent impairment for only one leg and that she was entitled to an additional award of seven percent permanent impairment for the other leg.

In a report dated November 1, 2002, Dr. James J. Sardo, a treating Board-certified physiatrist, diagnosed bilateral plantar fasciitis. A physical examination revealed:

“Her gait is steady and symmetric. She is tender to palpation over the calcaneus bilaterally. There is no evidence of any swelling or effusion in the ankles or in the feet. Ankle dorsiflexion was to neutral. She had full plantar flexion. Motor strength was 5/5 in both lower extremities. Sensation was intact in both feet. Reflexes 2+ and symmetric in both lower extremities. She had crepitus with range of motion at both knees. She was tender to palpation in both knees.”

Using Table 17-11 at page 537 of the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) he concluded that appellant had a “[three] [percent] whole person impairment for each foot based on reduced ankle dorsiflexion.” Dr. Sardo then utilized the Combined Values Chart to find appellant had a total six percent whole person impairment.

An Office medical adviser reviewed Dr. Sardo's report on December 18, 2002 and applied the fifth edition of the A.M.A., *Guides* to the report. Using Table 17-11 at page 537, he noted that dorsiflexion for the right and left ankles was zero degrees which equated to a seven percent bilateral lower extremity impairment.

¹ Appellant stopped work in 1998 and has not returned.

In a merit decision dated December 31, 2002, the Office found that appellant was not entitled to an additional schedule award beyond the seven percent she had received.

On November 27, 2003 appellant's counsel requested reconsideration on the grounds that the Office issued appellant a seven percent impairment for one leg and the medical evidence indicated that appellant had a seven percent impairment for each lower extremity. Thus, appellant contended she was entitled to an additional schedule award of seven percent for the other leg.

By merit decision dated February 10, 2004, the Office denied appellant's request to modify her schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ 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.⁴ 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.⁵

ANALYSIS

In this case, appellant alleges that she only received a schedule award for a seven percent impairment of one foot.

The Board has carefully reviewed the record and finds that appellant has no greater than a seven percent bilateral permanent impairment of her feet. An Office medical adviser properly reviewed the medical record and extrapolated from Dr. Sardo's report which provided measurements for appellant's range of motion which indicated that appellant's bilateral ankle dorsiflexion was zero degrees of neutral and she had full plantar flexion in both ankles. The Office medical adviser compared the finding of reduced ankle dorsiflexion and full plantar flexion to Tables 17-11, page 537 of the A.M.A., *Guides* and determined that appellant was entitled to a seven percent impairment of the right leg and a seven percent impairment of the left

² 5 U.S.C. § 8107(a)(c).

³ 20 C.F.R. § 10.404.

⁴ 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)(2).

⁵ See 20 C.F.R. § 10.404. See also *Mark A. Holloway*, 55 ECAB ____ (Docket No. 03-2144, issued February 13, 2004); *James Kennedy, Jr.*, 40 ECAB 620 (1989); *Charles Dionne*, 38 ECAB 306 (1986).

leg based on her reduced ankle dorsiflexion.⁶ Because there are no other physical findings of record, except the report of reduced ankle dorsiflexion from which to calculate permanent impairment under the A.M.A., *Guides*, the Board concludes that appellant has not shown that she is entitled to greater than the award issued by the Office. Appellant has provided no relevant medical evidence to establish that she has greater than seven percent impairment of the right foot and greater than seven percent impairment of the left foot.

Appellant contends that the schedule award she received was only for a seven percent impairment of one foot. In regard to the number of weeks of compensation, the Act provides 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. For the total loss of one foot, the Act provides for 204 weeks of compensation.⁷ Any loss less than a total loss is compensated at a proportionate rate, so a 7 percent loss of use the right foot equals 14.28 weeks of compensation, or 204 multiplied by 7 percent.⁸ Thus, a loss for both right and left lower extremities would equal a total 28.56 weeks, or 14.28 for each foot. In its May 16, 1994 schedule award decision, the Office issued appellant a schedule award for a seven percent permanent impairment of the left foot and a seven percent impairment of her right foot and determined the period of the award for both legs was 28.68 weeks. As the Office correctly calculated the number of weeks for appellant's schedule award, she is not entitled to any additional weeks.

CONCLUSION

The Board finds that appellant is not entitled to greater than a seven percent impairment of the right foot and a seven percent impairment of the left foot.

⁶ The A.M.A., *Guides* were prepared to establish reference tables and evaluation protocols which, if followed, may allow the clinical findings of the physician to be compared directly with the impairment criteria and related to impairment percentages. While the medical opinion of the treating physician may be accorded some weight, his or her clinical data can be readily extrapolated and evaluated within the tables and guidelines as presented. *Michael D. Nielsen*, 49 ECAB 455 (1996).

⁷ 5 U.S.C. § 8107(c)(4).

⁸ *Jeffrey J. Stickney*, 51 ECAB 616 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 10, 2004 is affirmed.

Issued: November 23, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member