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

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| **PAUL M. REES, Appellant** | ) | |
| | ) | **Docket No. 05-1745** |
| **and** | ) | **Issued: December 2, 2005** |
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| **U.S. POSTAL SERVICE, POST OFFICE, Des Moines, IA, Employer** | ) | |

*Appearances:*
*Paul M. Rees, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

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

### ***JURISDICTION***

On August 19, 2005 appellant filed a timely appeal of the June 30, 2005 merit decision the Office of Workers' Compensation Programs, which found that he had no more than a 25 percent permanent impairment of the right foot. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

### ***ISSUE***

The issue is whether appellant has more than a 25 percent permanent impairment of the right foot for which he received a schedule award.

### ***FACTUAL HISTORY***

On November 21, 2002 appellant, then a 45-year-old letter carrier, filed an occupational disease claim alleging that he developed a dislocated right toe and deformities of the right foot as a result of the walking and standing required in his federal employment. Appellant became aware of his condition on May 1, 1975. The Office accepted appellant's claim for aggravation of hammer toe of the right foot, the third, fourth and fifth toes and later accepted an aggravation of

the hammer toe of the right foot second toe.[1] Appellant did not stop work but returned to a light-duty position. Appropriate compensation benefits were paid.

In support of his claim, appellant submitted Veterans Administration medical records commencing 1978 which noted that he injured his feet in 1975 while in the military and developed plantar warts of the right foot and early degenerative arthritis of the right foot. The records noted appellant's treatment for a right foot crush injury in 1975 with a dislocated fifth metatarsal and third hammer toes with painful callosities on the plantar aspect of the foot. Appellant was diagnosed with an intractable plantar peratoma of the fifth metatarsal head of the right foot. In treatment notes dated January 19, 2000, appellant was diagnosed with hammer toe deformity of the right third, fourth and fifth toes. An x-ray of the right foot dated June 29, 2001 revealed degenerative joint disease involving the interphalangeal joints with phalanges of the right fifth toe angulated medially. Also submitted was an undated report from Dr. Michael P. O'Connor, an osteopath, who noted that appellant sustained a crush injury to both feet several years prior which caused hammer toe deformities of the third, fourth and fifth toes on the left foot resulting in callous formation and pressure sores. An x-ray of the right foot dated August 17, 2001 revealed an old right fifth metatarsal head fracture. Appellant also submitted a November 18, 2003 report from Dr. Michael J. Huang, a Board-certified orthopedic surgeon, who noted a history of appellant's right foot injury and diagnosed hammer toe deformity of the second to fifth toes with a dislocated fifth metatarsal joint. He recommended surgical intervention. On December 4, 2003 Dr. Huang performed a joint resection of the right second digit with percutaneous pin arthrodesis, joint resection and percutaneous pinning of the third digit, joint resection and joint arthrodesis of the fourth digit, resection arthroplasty of the proximal phalanx of the fifth digit, syndactylization of the fourth and fifth digits and extensor tendon lengthening of the third and fourth digits. He diagnosed right claw toe deformity in the second through fifth digits of the right foot.[2]

On December 27, 2004 appellant filed a claim for a schedule award.

In a letter dated January 10, 2005, the Office requested that appellant have his treating physician provide an evaluation as to the extent of permanent impairment of the right lower extremity in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[3] (A.M.A., *Guides*). Appellant's treating physician did not submit an impairment rating.

On April 18, 2005 the Office referred appellant for a second opinion to Dr. Charles Denhart, a Board-certified orthopedic surgeon, for an evaluation of the degree of permanent impairment of the right lower extremity in accordance with the A.M.A., *Guides*.

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[1] The Office notified appellant that his claim was accepted for aggravation of hammer toe of the left foot, the third, fourth and fifth toes and later expanded to include aggravation of the hammer toe of the left foot second toe. However, this appears to be a typographical error as the claim form and surrounding medical records refer to a right foot injury.

[2] Appellant filed a recurrence of disability claim indicating that he sustained a recurrence on February 16, 2004 which was accepted by the Office on April 14, 2004.

[3] A.M.A., *Guides* (5th ed. 2001).

In a May 9, 2005 report, Dr. Denhart noted that appellant had a bilateral foot injury in 1975 and subsequently underwent surgery. He noted findings upon physical examination of an antalgic gait, strength on manual muscle testing on dorsiflexion of the great toe was normal, ankle dorsiflexion was normal, knee flexion and extension were normal, sensory examination revealed hypothesis involving the entire right foot, range of motion of the metatarsal phalangeal joint of the digits two through four on the right foot revealed ankylosis in functional positioning, and on passive range of motion there was fixed ankylosis. Dr. Denhart diagnosed status post injury to the right digits two through five with subsequent development of hammer toes, surgical arthrodesis of digits two through five and resection of the proximal phalanx of the fifth digit. He noted that appellant reached maximum medical improvement on December 8, 2004, a year after surgery. Dr. Denhart indicated that appellant's impairment related to his foot. He found loss of range of motion of the digits two through five of the right foot and the hypothesis involving both the dorsal surface of the right foot all affected his gait, limiting his ability to stand or walk. Dr. Denhart noted that, when appellant attempted to walk without his orthosis, he was unsteady. He noted that in accordance with Table 17-5 of the A.M.A., *Guides* appellant's gait would fall into the mild range of severity, with antalgic limp and a shortened stance phase, which would represent a seven percent impairment of the whole person.[4]

The Office referred Dr. Denhart's report and the case record to the Office's medical adviser for evaluation as to the extent of permanent impairment of the right lower extremity in accordance with the A.M.A., *Guides*. In a report dated May 16, 2005, the Office medical adviser determined that appellant had reached maximum medical improvement on December 8, 2004. He advised that appellant's right lower extremity difficulties did not affect the hip, knee or ankle. The medical adviser concurred in Dr. Denhart's impairment rating of seven percent impairment under Table 17-5 but noted that the Office did not grant whole person impairment ratings. He converted the whole person impairment to a lower extremity impairment using Table 17-3 of the A.M.A., *Guides* and determined that appellant sustained a 17.5 percent impairment of the right lower extremity.[5] The medical adviser noted that the 17.5 impairment rating to the right lower extremity would convert into a 25 percent impairment of the right foot using the conversion information on 17.2a of the A.M.A., *Guides*.[6] The medical adviser determined that appellant had a 25 percent impairment of the right foot.

In a decision dated June 30, 2005, the Office granted appellant a schedule award for 25 percent permanent impairment of the right foot. The period of the award was May 10, 2005 to May 3, 2006. The Office noted that appellant received wage-loss compensation between December 8, 2005 to May 9, 2006, and therefore the start date of the schedule award was administratively moved to May 10, 2005.

[4] Table 17-5, page 529 of the A.M.A., *Guides.*

[5] The medical adviser noted that a 7 percent whole person impairment converted to a 17 or 18 percent impairment rating for the lower extremity using Table 17-3 of the A.M.A., *Guides*. The medical adviser chose an impairment rating in between these figures, 17.5, as the appropriate measure of appellant's right lower extremity impairment.

[6] *See* 17-2(a) Converting from Lower Extremity to Whole Person Impairment, page 527 of the A.M.A., *Guides.*

## ***LEGAL PRECEDENT***

The schedule award provision of the Federal Employees' Compensation Act[7] and its implementing regulation[8] sets 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.[9]

## ***ANALYSIS***

On appeal, appellant argues that he is entitled to greater than 25 percent permanent impairment of the right foot. The Office accepted appellant's claim for aggravation of hammer toe of the right foot, the third, fourth and fifth toes and later expanded his claim to include aggravation of the hammer toe of the right foot second toe.

The Office referred appellant for a second opinion to Dr. Denhart who issued a report dated May 9, 2005. Dr. Denhart diagnosed status post injury to the right digits two through five with subsequent development of hammer toes, surgical arthrodesis of digits two through five and resection of the proximal phalanx of the fifth digit. He noted that appellant's impairment involved his foot and that appellant reached maximum medical improvement on December 8, 2004. He noted that, in accordance with Table 17-5 of the A.M.A., *Guides*[10] appellant's gait would fall into the mild range of severity, with antalgic limp and a shortened stance phase, which would represent a seven percent impairment of the whole person.

The medical adviser properly utilized the findings in Dr. Denhart's May 9, 2005 report, and correlated them to specific provisions in the A.M.A., *Guides* (5th ed.) to determine the impairment rating. The medical adviser noted that appellant's right foot condition did not affect the hip, knee or ankle. The medical adviser converted the whole person impairment into impairment of the affected scheduled member, the right foot. The Board notes that schedule awards for permanent impairment are not based on "total body" or whole person impairment, but on impairment to a scheduled member, such as the foot.[11] Utilizing Table17-3 of the A.M.A., *Guides*, the medical adviser determined that 7 percent whole person impairment calculated by Dr. Denhart's would convert into a 17 or 18 percent impairment of the lower extremity and selected the mid-point between these two numbers, 17.5 percent.[12] Upon application of section

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404 (1999).

[9] *Id.*

[10] Table 17-5, page 529 of the A.M.A., *Guides.*

[11] *See Jacqueline S. Harris*, 54 ECAB ___ (Docket No. 02-203, issued October 4, 2002).

[12] Table 17-3, 17-5, and 17.2(a), pages 527-29 of the A.M.A., *Guides.*

17.2(a) of the A.M.A., *Guides*, the medical adviser converted this figure into a 25 percent impairment of the right foot.[13]

The Board finds that the medical adviser properly applied the A.M.A., *Guides* to the findings of Dr. Denhart in calculating an impairment rating of 25 percent for the right foot. There is no other evidence of record, conforming with the A.M.A., *Guides,* indicating that appellant has any greater impairment.

On appeal, appellant asserts that the amount of the schedule award is insufficient as he can no longer perform his previous job. However, the Board has held that compensation granted pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity, sports, hobbies or other lifestyle activities.[14]

## ***CONCLUSION***

The Board finds that the Office properly determined that appellant had no more than a 25 percent permanent impairment of the right foot for which he received a schedule award.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the June 30, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[13] Specifically, utilizing paragraph 17.2(a) page 527 of the A.M.A., *Guides* to the figures in this case provides a conversion calculation of 17.5 percent impairment of the lower extremity divided by .7 which would equal a 25 percent impairment of the right foot.

[14] *Ruben Franco*, 54 ECAB ___ (Docket No. 02-2194, issued March 21, 2003).