U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JASON KOMINSKI and DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, Bakersfield, CA

Docket No. 01-1512; Submitted on the Record;
Issued April 22, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant is entitled to more than a 21 percent permanent impairment of his left leg for which he received a schedule award.

On August 20, 1999 appellant, then a 28-year-old wildland firefighter, filed a notice of traumatic injury claiming that on that same day he was demonstrating rock climbing techniques when he fell 30 feet and fractured his left ankle, also injuring his left hip and lower back. Appellant's claim was accepted on October 21, 1999 for left ankle fractures, right fifth metatarsal fracture, left trochanteric fracture and left MCL strain and medial meniscus tear and appellant was paid appropriate compensation. He underwent multiple surgeries and physical therapy and returned to work on May 11, 2000.

On January 3, 2001 appellant filed a claim for a schedule award. The Office of Workers' Compensation Programs referred appellant to Dr. Bradford A. Anderson, Board-certified in physical medicine and rehabilitation, to determine the extent of permanent partial impairment of appellant's left lower extremity. In a report dated February 5, 2001, Dr. Anderson indicated that appellant had a loss of function due to limitation of motion of the ankle. He found that dorsiflextion of the affected ankle was 12 degrees, compared to 20 degrees of the opposite ankle, that plantar flexion of the affected ankle was 12 degrees, compared to 40 degrees of the opposite one, that inversion of the affected ankle was 8 degrees, compared to 30 degrees and that eversion of the affected ankle was 0 degrees, compared to 18 degrees. Dr. Anderson also found that appellant had weakness or atrophy of 25 on the left side and that the measurable atrophy of the affected side was 36.5 centimeters (cm) compared to 37.2 of the normal side. In discussing the findings, he stated:

> "[Appellant] continues to show limitations in range of motion at his ankle with locked eversion, approximately 50 percent of dorsiflexion, 30 percent of plantar flexion and 25 percent of inversion. [He] has lost 25 percent of dorsiflexion strength, particularly at the anterior tibialis and the extensor hallucis longus. [Appellant] does demonstrate atrophy of the left lower extremity by

approximately 1 cm. He is able to toe walk and heel walk, but demonstrates difficulty in fully rising on the toes and lifting the toes off the floor when heel walking. Gait is not antalgic."

In a report dated March 20, 2001, Dr. Leonard A. Simpson found that appellant had a zero percent impairment of the right lower extremity and a twenty one percent impairment of the left lower extremity.

On March 28, 2001 the Office awarded appellant a twenty one percent permanent impairment for the left lower extremity and a zero percent impairment of the right lower extremity.

The Board finds that appellant has a 24 percent impairment of the left lower extremity.

The schedule award provision of the Federal Employees' Compensation Act[1] and its implementing regulation[2] 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment*[3] has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that, in obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent description of the impairment."[4] This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.[5]

In this case, appellant's attending physician, Dr. Anderson, reported on February 5, 2001 that appellant still had pain in the lateral aspect of the ankle with some occasional soft tissue swelling. He performed tests of the range of motion of appellant's left ankle, including the

[1] 5 U.S.C. § 8107.

[2] 20 C.F.R. § 10.404.

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

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

[5] *Noe L. Flores*, 49 ECAB 344 (1998).

subtalar joint compared to the opposite ankle and found that the date of maximum medical improvement was December 6, 2000.

The Office referred Dr. Anderson's report to the Office medical adviser on March 14, 2001 for calculation of appellant's permanent impairment. The Office medical adviser reviewed the medical evidence of record and concluded, based upon Dr. Anderson's February 5, 2001 report, that, appellant had a 21 percent impairment of the left lower extremity. The Board finds that, using the measurements provided by Dr. Anderson and applying them to the tables in the A.M.A., *Guides* measuring ankle and knee pain and ankle and knee range of motion, appellant has a 24 percent impairment rating of the lower left extremity.

In applying Table 17-37, page 552, to measure ankle pain, the maximum impairment for dysesthesia or pain for the peroneal and sural nerves is five percent. This value is then graded using Table 16-10, page 482. Table 16-10, Grade II, allows up to 80 percent sensory deficit impairment. From this is derived a total of eight percent impairment for the ankle due to pain, four percent for each nerve. In measuring knee pain using Table 17-37, the maximum for femoral nerve pain is seven percent. Grade III in Table 16-10 allows up to 60 percent. This totals four percent impairment for pain of the left knee. As these are separate affected joints, the Combined Values Chart is used to determine a total of 12 percent for pain of the left lower extremity.

In measuring knee range of motion using Table 17-10, page 537, flexion of 115 degrees is 0 impairment. Extension (flexion contracture) of zero degrees is zero impairment. In measuring ankle range of motion using Table 17-11, page 537, dorsiflexion (extension) of 12 degrees is 0 impairment and plantar flexion of 12 degrees is a mild impairment or 7 percent. Using Table 17-12, page 537, inversion of eight degrees is a moderate impairment or five percent[6] and eversion of zero degrees is a mild impairment or two percent. At paragraph 17.2f the A.M.A., *Guides* provide that the range of motion impairments for a single joint are added to determine total impairment for the joint, which for the ankle joint totals 14 percent. Applying the Combined Values Chart, the pain and range of motion losses, 12 and 14 percent respectively, amount to a total impairment of 24 percent. The Board finds that appellant has a 24 percent permanent impairment of the left lower extremity.

[6] With regard to the loss for inversion, Dr. Simpson indicated a two percent impairment.

Accordingly, the March 28, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed, as modified.

Dated, Washington, DC
April 22, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member