

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FELIX ROMAN and DEPARTMENT OF THE ARMY,
DEPARTMENT OF DEFENSE POLICE, Fort Dix, NJ

*Docket No. 01-2087; Submitted on the Record;
Issued April 18, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has greater than a 25 percent impairment for loss of use of the right lower extremity, for which he received a schedule award.

On January 26, 2000 appellant, then a 42-year-old recreation assistant, sustained an injury to his right ankle while in the performance of duty. On March 24, 2000 the Office of Workers' Compensation Programs accepted right ankle fracture, authorized physical therapy and paid appropriate benefits.

On December 4, 2000 appellant filed a schedule award.

In support of his claim, appellant submitted an October 17, 2000 report from Dr. David Weiss, an osteopath, recommending a 25 percent schedule award for appellant's lower extremity impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.¹

In a report dated December 14, 2000, the Office medical adviser relied on Dr. Weiss' data and recommended a 25 percent impairment rating for appellant's right lower extremity.

In a decision dated March 31, 2001, the Office awarded appellant a 25 percent schedule award for impairment to his right lower extremity.

The Board finds that appellant has no more than a 25 percent permanent impairment for loss of use of the right lower extremity, for which he received a schedule award.

¹ In a report dated November 30, 2000, Dr. John M. Gray, appellant's treating orthopedic surgeon, noted agreement with Dr. Weiss' report.

The schedule award provisions 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. 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.⁴

In a memorandum and Office work sheet dated December 14, 2000, the Office medical adviser found that appellant had a 25 percent impairment based on loss of use of his right lower extremity pursuant to the A.M.A., *Guides*. Relying on Dr. Weiss' findings and conclusions, the Office medical adviser noted that appellant had 35 degrees plantar flexion, 5 degrees dorsiflexion, 35 degrees inversion and 50 degrees eversion. He found a 7 percent impairment based on loss of dorsiflexion and a 2 percent loss of eversion, pursuant to Table 55 at page 80 of the A.M.A., *Guides*;⁵ and an additional 17 percent impairment due to a Grade IV loss of muscle strength pursuant to Table 38 at page 77.⁶ The Office medical adviser used the Combined Values Chart to arrive at a total 25 percent impairment of the right lower extremity.⁷

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no more than a 25 percent permanent impairment for loss of use of his right lower extremity, for which he has received a schedule award from the Office and that appellant has failed to provide probative, supportable medical evidence that he has greater than the 25 percent impairment already awarded.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Id.*

⁵ A.M.A., *Guides* 80, Table 55.

⁶ *Id.* at 38, Table 77.

⁷ *Id.* at 322.

The March 31, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 18, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member