United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 07-1134**
	)	**Issued: November 5, 2007**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 20, 2007 appellant filed a timely appeal from a March 7, 2007 decision which granted her schedule awards for three percent impairment of the right lower extremity and five percent impairment of the left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has more than three percent permanent impairment of the right leg and five percent impairment of the left leg for which she received schedule awards.

FACTUAL HISTORY

On January 20, 2003 appellant, then a 55-year-old manager, filed an occupational disease claim alleging that she developed bilateral hammertoe deformities as a result of the standing and walking required by her position. The Office accepted her claim for aggravation of bunions of both feet and authorized bunionectomies. Appellant stopped work on December 3, 2002 and returned to work full-time limited duty on March 3, 2003 and stopped on May 15, 2003. She

returned to limited-duty work on September 8, 2003. Appropriate compensation benefits were paid.

Appellant came under the treatment of Dr. David Amarnek, a podiatrist. In an operative report dated December 4, 2002, Dr. Amarnek performed a chevron bunionectomy of the left foot and arthroplasty of the fourth proximal interphalangeal joint of the left foot and diagnosed hallux valgus left and hammertoe fourth left. He noted in reports dated December 10, 2002 to January 22, 2003, that appellant was progressing well postoperatively with no pain or discomfort. On January 8, 2003 Dr. Amarnek performed a chevron bunionectomy of the right foot, arthroplasty of the second distal interphalangeal joint and fourth proximal interphalangeal joint of the right foot. He diagnosed hallux valgus, right, hammer toe of the second distal interphalangeal joint and fourth proximal interphalangeal joint on the right. In attending physician's reports dated June 10 and August 13, 2003, Dr. Amarnek diagnosed hallux valgus and hammertoes and noted with a "checkmark" yes that the condition was aggravated by her employment. He advised that appellant was totally disabled on May 17, 2003.

On December 3, 2003 appellant filed a claim for a schedule award.

In a letter dated July 20, 2004, the Office requested that Dr. Amarnek provide an evaluation as to the extent of permanent partial impairment of the bilateral lower extremities in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*).[1] In a report dated August 14, 2004, Dr. Amarnek noted that appellant reached maximum medical improvement on May 1, 2004. He opined that appellant sustained 10 percent impairment but continued to experience pain and discomfort. In a report dated November 19, 2004, an Office medical adviser indicated that an impairment rating could not be calculated because there was no documentation of physical examination after appellant reached maximum medical improvement. He requested that the treating physician provide an examination of the bilateral feet which includes range of motion of the great toes bilaterally and a description of the location of pain.

Dr. Amarnek submitted a report dated October 24, 2005 and advised that appellant reached maximum medical improvement on September 6, 2005. He noted findings upon examination of 30 degrees of dorsiflexion of the first metatarsophalangeal joint bilaterally and painful hammertoe deformities, metatarsalgia and significant equines deformity.

In a report dated December 11, 2005, the medical adviser opined that appellant sustained two percent permanent impairment to each the right and left lower extremity. He referenced Dr. Amarnek's October 24, 2005 report in which range of motion measured 30 degrees of dorsiflexion at the first metatarsophalangeal joint bilaterally for two percent permanent impairment of the right and left legs.[2] The medical adviser determined that maximum medical improvement was May 1, 2004.

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

[2] *Id.* at 537, Table 17-14.

In reports dated September 6 and November 29, 2005, Dr. Amarnek advised that appellant presented with progressively painful hammertoe deformities of the third digit bilaterally. He advised that appellant was having more discomfort associated with her work duties which involved prolonged weight-bearing beyond her restrictions and recommended surgical intervention. In a December 9, 2005 operative report, Dr. Amarnek performed arthroplasty of the third distal and phalangeal joint bilaterally and tenotomy and capsulotomy of the third metatarsophalangeal joint bilaterally and diagnosed hammertoe third digit bilaterally at the distal interphalangeal joint and contracted third metatarsophalangeal joint bilaterally. On February 7, 2006 Dr. Amarnek noted appellant's complaints of persistent foot pain bilaterally with hammertoe deformities involving the second and third proximal interphalangeal joints, shooting pain extending from the foot to the knee bilaterally, pain in the longitudinal arch bilaterally with clinical symptoms suggestive of metatarsalgia and gastroc soleus equines deformity with a hype-pronated foot type.

On March 28, 2006 the Office referred appellant for a second opinion to Dr. John O. Krause, a Board-certified orthopedist, for a determination of whether appellant had residuals of her accepted work-related condition.[3] The Office requested that Dr. Krause provide an impairment rating in accordance with the A.M.A. *Guides.*

In an April 20, 2006 report, Dr. Krause noted a history of appellant's work condition and subsequent surgeries. He found that she had residuals from her accepted work-related bunions despite surgical correction and experienced significant hallux valgus deformities, increased intermetatarsal angle left greater than right and medial foot pain. Dr. Krause opined that appellant could return to work in her previous position as a manager in distribution operations without restrictions. He opined that, in accordance with the A.M.A., *Guides*, she had three percent whole person impairment.[4] Dr. Krause noted two percent whole person impairment for left metatarsophalangeal joint and one percent whole person impairment for the right first metatarsophalangeal joint. He advised that the A.M.A., *Guides* did not allow for impairments due to lesser toe deformities and pursuant to Table 17-2, page 525 of the A.M.A., *Guides*, arthritis and range of motion could not be combined in determining impairment.[5]

In a letter dated October 3, 2006, the Office advised Dr. Krause that schedule awards for permanent impairment were not based on whole person impairment, but on impairment to a particular extremity. The Office requested that Dr. Krause provide an impairment rating for the feet in accordance with the A.M.A., *Guides*.

[3] The record reveals that the Office did not authorize the December 9, 2005 foot surgery.

[4] A.M.A., *Guides* 544, Table 17-31.

[5] The Office found that a medical conflict existed between Dr. Amarnek, appellant's physician, and Dr. Krause, an Office referral physician, regarding whether appellant's residuals of her accepted conditions were disabling or necessitated the December 9, 2005 surgery. To resolve the conflict, the Office referred appellant to Dr. Marvin R. Miskin, a Board-certified orthopedist, who indicated, in a report dated August 1, 2006, that appellant's bilateral foot problems were not work related and opined that appellant could return to her date-of-injury position without restrictions. On October 3, 2006 the Office terminated appellant's monetary benefits. On October 8, 2006 appellant requested an oral hearing which was held on March 27, 2007. As she appealed the Board's decision on March 20, 2007, the Board, in the present appeal, has no jurisdiction over any subsequent decision by the hearing representative regarding the termination of monetary benefits. *See* 20 C.F.R. §§ 501.2(c), 501.3(d).

In a supplemental report dated October 22, 2006, Dr. Krause opined that appellant sustained a three percent permanent impairment to both lower extremities based on mild limitation of great toe metatarsal phalangeal joint extension.[6] He noted normal interphalangeal joint flexion, no ankylosis of the lesser toes, no loss of function due to weakness or atrophy, causalgia, amputation, pain, discomfort or sensory alteration and mild intensity of foot pain. Dr. Krause noted, with respect to the right great toe, range of motion for metatarsophalangeal extension was 20 degrees and interphalangeal flexion was 30 degrees. With respect to the left great toe, range of motion for metatarsophalangeal extension was 20 degrees and interphalangeal flexion was 20 degrees. Dr. Krause opined that the date of maximum medical improvement was April 8, 2003, which was three months after her right foot bunionectomy and forefoot surgery.

The Office referred the case record to an Office medical adviser for evaluation as to the extent of permanent partial impairment of the lower extremities in accordance with the A.M.A., *Guides*. In a report dated October 17, 2006, the medical adviser found that appellant sustained three percent permanent impairment of the right leg and five percent impairment of the left leg. He referenced Dr. Krause's October 22, 2006 report and calculated that appellant had one percent impairment of the right and left legs for sensory deficit or pain in the distribution of the medial plantar nerve under Table 16-10 of the A.M.A., *Guides*.[7] The medical adviser further calculated that appellant had a maximum sensory loss of 25 percent of the left and right leg, a Grade 4 pain in the distribution of the medial plantar nerve under Table 17-37.[8] Impairment due to sensory loss was calculated as 1 percent impairment for the left and right lower extremity or leg by multiplying the 25 percent grade with the 5 percent maximum allowed for the medial plantar nerve. The Office medical adviser calculated that on the right leg range of motion for the great toe, metatarsophalangeal extension was 20 degrees for two percent impairment[9] and interphalangeal flexion was 30 degrees for zero percent impairment.[10] With regard to the left leg, range of motion for the great toe, metatarsophalangeal extension was 20 degrees for two percent impairment[11] and interphalangeal flexion was 20 degrees for two percent impairment.[12] Using the Combined Values Chart, page 604 of the A.M.A., *Guides*, the medical adviser noted that appellant had a three percent permanent impairment of the right lower extremity and a five percent permanent impairment of the left lower extremity. He noted that range of motion figures cannot be combined with gait derangement, muscle atrophy, muscle strength and arthritis pursuant to Table 17-2, page 526 of the A.M.A., *Guides*.

In a decision dated March 7, 2007, the Office granted appellant schedule awards for three percent permanent impairment to the right leg and five percent impairment to the left leg.

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

[7] *Id.* at 482, Table 16-10.

[8] *Id.* at 552, Table 17-37.

[9] *Id.* at 537, Table 17-14.

[10] *Id.*

[11] *Id.* at 537, Table 17-14.

[12] *Id.*

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[13] and its implementing regulation[14] 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.[15]

ANALYSIS

On appeal, appellant contends that she has greater impairment to her lower extremities.

The Office referred appellant for a second opinion to Dr. Krause. In an April 20, 2006 report, Dr. Krause opined that appellant had a three percent whole person impairment. After the Office requested that he provide an impairment rating with respect to a specific body part, Dr. Krause noted on October 22, 2006 that appellant had three percent permanent impairment of the right and left legs based on mild limitation of great toe metatarsal phalangeal joint extension.[16] The Board has carefully reviewed Dr. Krause's report and notes that he did not adequately explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.[17] On physical examination of the right and left great toes, metatarsophalangeal extension was 20 degrees and interphalangeal flexion was 30 degrees for a three percent permanent impairment. The Board notes, however, that Dr. Krause's measurements do not correlate with A.M.A., *Guides* which provides for two percent impairment for metatarsophalangeal extension of 20 degrees[18] and zero percent impairment for interphalangeal flexion was 30 degrees.[19] Regarding the left lower extremity, Dr. Krause incorrectly noted that metatarsophalangeal extension was 20 degrees and interphalangeal flexion was 20 degrees for three percent permanent impairment. This does not conform with the A.M.A., *Guides* which provides for two percent impairment for metatarsophalangeal extension of 20 degrees[20] and two percent impairment for interphalangeal flexion of 20 degrees.[21]

[13] 5 U.S.C. § 8107.

[14] 20 C.F.R. § 10.404 (1999).

[15] *Id.*

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

[17] *See Tonya R. Bell*, 43 ECAB 845, 849 (1992).

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

[19] *Id.*

[20] *Id.*

[21] *Id.*

Therefore the Board finds that Dr. Krause's estimate of impairment findings is of limited probative value as he did not properly follow the A.M.A., *Guides*.[22]

The Office medical adviser properly correlated the findings of Dr. Krause to specific provisions in the A.M.A., *Guides* to determine the impairment rating. He opined that appellant sustained three percent permanent impairment of the right leg and five percent impairment of the left leg. The medical adviser referenced Dr. Krause's October 22, 2006 report and found that appellant had one percent impairment of the right and left legs for sensory deficit or pain in the distribution of the medial plantar nerve under Table 16-10 of the A.M.A., *Guides*.[23] In calculating sensory deficit impairment, he indicated that the distribution of the medial plantar nerve under Table 17-37[24] has a maximum five percent impairment of the leg due to sensory deficit. The medical adviser found that appellant's sensory deficit or pain was consistent with Grade 4 under Table 16-10 for which there is a maximum sensory loss of 25 percent. He, following the procedure in Table 16-10, multiplied the 25 percent grade with the 5 percent maximum allowed for the medial plantar nerve to arrive at 1 percent impairment for sensory loss in the distribution of the median planter nerve for each leg. The Office medical adviser also considered appellant's ranges of motion and calculated that, for the right great toe, metatarsophalangeal extension of 20 degrees represented two percent impairment[25] and interphalangeal flexion was 30 degrees for zero percent impairment.[26] For the left great toe, metatarsophalangeal extension of 20 degrees equaled two percent impairment[27] and interphalangeal flexion of 20 degrees represented two percent impairment.[28] Using the Combined Values Chart, page 604 of the A.M.A., *Guides* appellant had three percent impairment of the right leg and five percent impairment of the left leg.

The Board finds that the medical adviser properly applied the A.M.A., *Guides* to the findings of Dr. Krause in calculating an impairment rating of three percent permanent impairment of the right leg and five percent permanent impairment of the left leg. There is no other evidence of record, conforming with the A.M.A., *Guides*, indicating that appellant has any greater impairment.

[22] *See Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

[23] A.M.A., *Guides* 482, Table 16-10.

[24] *Id.* at 552, Table 17-37.

[25] *Id.* at 537, Table 17-14.

[26] *Id.*

[27] *Id.*

[28] *Id.*

CONCLUSION

The Board finds that the Office properly determined that appellant had no more than three percent permanent impairment of the right lower extremity and five percent permanent impairment of the left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board