United States Department of Labor
Employees' Compensation Appeals Board

G.B., Appellant	)	
and	)	**Docket No. 07-1617**
	)	**Issued: November 23, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Taylor, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:

JURISDICTION

On May 23, 2007 appellant filed a timely appeal from a February 28, 2007 decision of the Office of Workers' Compensation Programs which denied his claim for a schedule award. 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 the Office properly denied appellant's claim for a schedule award.

FACTUAL HISTORY

On August 1, 2003 appellant, then a 54-year-old letter carrier, filed an occupational disease claim alleging that he developed bilateral fasciitis and heel pain as a result of standing and walking required by his letter carrier position.[1] He stopped work on May 22, 2003 and returned to work full-time limited duty on May 28, 2003 and retired in 2005. Appellant came under the treatment of Dr. Daniel Zahari, a podiatrist, who treated him for bursitis, heel spur,

[1] Appellant filed a separate claim for left carpal tunnel syndrome which was accepted by the Office, File No. 09-2049027. This claim is not before the Board at this time.

bilateral plantar fasciitis and capsulitis of the lateral aspect of the right midfoot. Dr. Zahari submitted progress reports noting appellant's status.

On January 19, 2005 the Office accepted appellant's claim for aggravation of bilateral plantar fasciitis and aggravation of capsulitis of the right foot.

In reports dated March 11, 2005 to July 19, 2006, Dr. Zahari noted that appellant failed to respond to conservative treatment and recommended surgical intervention. He noted mild edema of the plantar medial aspect of the left heel and right heel, deep tendon reflexes was normal, muscle strength was normal, muscle tone was normal, examination of the heels shows pain to palpation of the plantar medial aspect of the bilateral feet and capsulitis, swelling and painful range of motion. Dr. Zahari diagnosed bursitis, heel spur, bilateral plantar fasciitis and capsulitis of both feet. In a schedule award worksheet dated July 19, 2006, he noted that appellant had 50 percent impairment of each foot. Dr. Zahari noted that appellant's feet caused chronic pain and advised that he could walk or stand for only short periods of time. He noted that appellant reached maximum medical improvement on July 19, 2006.

The Office referred to an Office medical adviser for evaluation of permanent partial impairment of the lower extremities in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.*[2] In a report dated August 23, 2006, the Office medical adviser indicated that Dr. Zahari did not provide an impairment rating in accordance with the A.M.A., *Guides*. He referenced the schedule award worksheet dated July 19, 2006 prepared by Dr. Zahari which provided an impairment rating of 50 percent to both feet. The medical adviser noted that Dr. Zahari failed to provide an explanation of how this impairment rating was calculated or mention the tables or figures to support his determination. He recommended that appellant be referred for second opinion evaluation regarding permanent impairment.

Appellant submitted additional reports from Dr. Zahari who diagnosed bursitis, heel spur, bilateral plantar fasciitis and capsulitis of both feet. Dr. Zahari opined that appellant was totally disabled.

On August 23, 2006 the Office referred appellant to Dr. Bruce D. Abrams, a Board-certified orthopedic surgeon, for a determination of whether appellant had residuals or permanent impairment attributable to his accepted conditions.

In a September 27, 2006 report, Dr. Abrams noted a history of appellant's work-related condition and subsequent treatment. He noted examination findings of full, normal range of motion in appellant's feet with 25 degrees of dorsiflexion, 50 degrees of plantar flexion, 30 degrees of inversion, 30 degrees of eversion and 15 degrees of subtalar motion for varus and valgus combined. Dr. Abrams noted that other findings were normal such as a negative drawer sign, no tenderness or swelling in the feet and ankles, normal gait, intact sensation and no atrophy of the calves. He noted that x-rays of the feet revealed calcific density in the plantar fascial region in the hindfoot, no calcaneal exostoss and the joints of the feet and ankle were normal. Dr. Abrams diagnosed subjective pain in the hindfoot and heels with a normal

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

examination. He advised that appellant did not experience a temporary or permanent aggravation of his bilateral foot condition and opined that his foot pain was not necessarily associated with his occupational duties as a mail carrier. Dr. Abrams noted that the physical examination was normal and appellant's complaints were all subjective. He opined that appellant had no loss of motion or neurologic function and did not have a permanent impairment of his feet. Dr. Abrams determined that appellant sustained no impairment. He further noted that appellant did not require work restrictions for his bilateral foot condition and required no further treatment for his feet as it related to his employment. Dr. Abrams determined that appellant reached maximum medical improvement on September 27, 2006.

Appellant submitted a schedule award worksheet from Dr. Zahari dated July 19, 2006. He rated a 75 percent bilateral foot impairment, noting that appellant's feet caused chronic pain and he could walk or stand for only short periods of time. Dr. Zahari noted that appellant reached maximum medical improvement on July 19, 2006. In reports dated October 10 and 11, 2006, he advised that appellant was under his care for heel spurs, capsulitis, plantar fasciitis. He noted that sensation of the feet was normal, deep tendon reflexes were normal, muscle strength was normal, muscle tone was normal, inspection and palpation of the bones, joints and muscles was unremarkable and both feet showed evidence of capsulitis with swelling with painful range of motion. Dr. Abrams diagnosed bursitis, heel spur, bilateral plantar fasciitis, capsulitis of both feet and possible nerve entrapment of both heels. In attending physician's report's dated October 13 and November 8, 2006, he noted work-related diagnoses and indicated that appellant's condition would not improve.

On November 8, 2006 appellant filed a claim for a schedule award.

In a report dated November 24, 2006, the Office medical adviser concurred with Dr. Abram's determination that appellant did not sustain any permanent partial impairment of lower extremities. He noted Dr. Abrams findings upon physical examination for ankle dorsiflexion of 25 for zero percent impairment;[3] ankle plantar flexion of 50 degrees for zero percent impairment;[4] hindfoot inversion of 30 degrees for zero percent impairment;[5] hindfoot eversion of 30 degrees for zero percent impairment;[6] varus of 15 degrees for zero percent impairment[7] and valgus of 15 degrees for zero percent impairment.[8] The medical adviser that Dr. Abrams noted a normal physical examination including range of motion and found only subjective bilateral heel pain. He opined that appellant's bilateral foot condition was a chronic, preexisting problem with no objective findings upon physical examination and determined that appellant was not entitled to a schedule award for functional impairment.

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

[4] *Id.*

[5] *Id*. at 537, Table 17-12.

[6] *Id.*

[7] *Id*. at 537, Table 17-13.

[8] *Id.*

Appellant submitted reports from Dr. Zahari dated November 8, 2006 to February 9, 2007, who noted that the physical examination was unchanged and diagnosed bursitis, heel spur, bilateral plantar fasciitis, capsulitis of both feet and possible nerve entrapment of both heels.

In a decision dated February 28, 2007, the Office denied appellant's claim for a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[9] and its implementing regulations[10] 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.[11]

ANALYSIS

The Office accepted appellant's claim for aggravation of bilateral plantar fasciitis and aggravation of capsulitis of the right foot. On appeal, appellant contends that he is entitled to a schedule award for permanent impairment of his lower extremities.

The Office referred appellant for a second opinion to Dr. Abrams. In a September 27, 2006 report, Dr. Abrams noted findings upon physical examination of full and normal range of motion for the feet. He noted a normal physical examination. Dr. Abrams stated that x-rays of the feet revealed calcific density in the plantar fascial region in the hindfoot, no calcaneal exostosis and the joints of the feet and ankle were normal. He diagnosed subjective pain in the hindfoot and heels with a normal examination, status post carpal tunnel surgery on the left hand with numbness and loss of function, degenerative joint disease of the lumbar spine, bilateral knee and left shoulder, impingement syndrome and rotator cuff disease, exogenous obesity and hypertension. Dr. Abrams opined that appellant sustained a zero percent impairment. He determined that appellant reached maximum medical improvement on September 27, 2006 and advised that he did not require work restrictions for his bilateral foot condition or further treatment for his feet as it related to his employment.

The Board finds that, under the circumstances of this case, the opinion of Dr. Abrams is sufficiently well rationalized and based upon a proper factual background such that it establishes that appellant did not sustain a work-related permanent impairment of the lower extremities. Dr. Abrams opined that to a reasonable degree of medical certainty appellant has no disability as

[9] 5 U.S.C. § 8107.

[10] 20 C.F.R. § 10.404 (1999).

[11] *Id.*

a result of the diagnosed conditions of aggravation of bilateral plantar fasciitis and aggravation of capsulitis of the right foot.

The Board has carefully reviewed Dr. Zahari's reports and notes that he did not adequately explain how his impairment ratings were reached in accordance with the relevant standards of the A.M.A., *Guides*.[12] In two different schedule award worksheets dated July 19, 2006, Dr. Zahari noted that appellant sustained 50 percent bilateral foot impairment and 75 percent bilateral foot impairment; however, he failed to provide his calculations in support of this determination. He did not cite to any tables or charts in the A.M.A., *Guides* to support his impairment rating. Therefore, the Board finds that Dr. Zahari did not properly follow the A.M.A., *Guides*. An attending physician's report is of diminished probative value where the A.M.A., *Guides* were not properly followed.[13]

The Office medical adviser reviewed the findings of Dr. Abram and agreed with his determination that appellant did not sustain any impairment of his lower extremities due to his accepted conditions. He referenced Dr. Abram's examination findings for ankle dorsiflexion of 25 for zero percent impairment;[14] ankle plantar flexion of 50 degrees for zero percent impairment;[15] hindfoot inversion of 30 degrees for zero percent impairment;[16] hindfoot eversion of 30 degrees for zero percent impairment;[17] varus of 15 degrees for zero percent impairment[18] and valgus of 15 degrees for zero percent impairment.[19] The medical adviser found no basis on which to attribute any permanent impairment pursuant to the A.M.A., *Guides*.

The Board finds that the Office properly denied appellant's claim for a schedule award as there is no evidence of record, conforming with the A.M.A., *Guides*, indicating that appellant has permanent partial impairment of the lower extremities.

CONCLUSION

The Board finds that the Office properly determined that appellant was not entitled to a schedule award for permanent partial impairment of the lower extremities.

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

[13] *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).

[14] A.M.A., *Guides* 537, Table 17-11.

[15] *Id.*

[16] *Id*. at 537, Table 17-12.

[17] *Id.*

[18] *Id*. at 537, Table 17-13.

[19] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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