

In a decision dated January 14, 2002, the Office granted a schedule award for one percent impairment of the right lower extremity. The period of the award ran for 2.88 weeks, from July 31 to August 20, 2001.

Appellant disagreed with the Office's January 14, 2002 decision and appealed to the Board. On December 31, 2003 the Board issued an order remanding case as it had not received the case record.¹ The case was remanded to the Office for reconstruction of the case record and, to fully protect appellant's rights, to appropriate decision.

In a decision dated May 18, 2004, the Office reissued the schedule award decision of January 14, 2002.

On June 1, 2004 appellant requested an oral hearing, which was held May 18, 2005. The Office received medical reports previously of record and new medical evidence. In an October 26, 2004 report, Dr. Robert P. Poetz, a family practitioner, noted the history of injury and appellant's complaints of stiffness and swelling in the right ankle and inability to run since the surgery. He diagnosed right Achilles tendinitis and status post debridement of the right Achilles tendon. Dr. Poetz opined that appellant lacked plantar and dorsiflexion by 10 percent on the right. He concluded that appellant had 30 percent right leg impairment, as measured at the right foot and ankle, due to the July 1999 work injury.

In a June 7, 2006 report, Dr. Poetz stated that he arrived at his impairment rating utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). He stated that appellant had seven percent impairment due to loss of plantar flexion and seven percent impairment due to loss of dorsiflexion. Dr. Poetz advised that his rating of 30 percent impairment of the right leg was based on the A.M.A., *Guides*, coupled with the history and appellant's chief complaints, review of the medical records and findings on physical examination. He noted that the A.M.A., *Guides* were only guidelines for the basis of a rating and ratings were raised or lowered depending on the other variables.

In a September 15, 2005 decision, an Office hearing representative set aside the Office's May 18, 2004 decision and remanded the case for an Office medical adviser to review the reports of Dr. Poetz.

In a report dated September 30, 2005, an Office medical adviser noted that Dr. Poetz, in the October 26, 2004 report, provided no measurements made by a goniometer and indicated that appellant had no sensory or motor deficits. The Office medical adviser found that Dr. Poetz's statement that appellant lacked plantar and dorsiflexion by 10 percent on the right side implied that appellant would have a ratable impairment due to range of motion restrictions. However, he stated that range of motion findings must be measured precisely using a goniometer and reported in degrees, not in terms of percentages. The Office medical adviser further stated that Dr. Poetz's June 7, 2005 note which suggested a rating based on range of motion of the ankle, was not acceptable for schedule award purposes as the A.M.A., *Guides* contain specific protocols for rating ankle impairment. The Office medical adviser found that Dr. Poetz did not provide a rating for the accepted ankle condition conforming to the A.M.A., *Guides*.

¹ Docket No. 02-1178 (issued December 31, 2003).

By decision dated October 4, 2005, the Office denied appellant's claim for an increased schedule award.

On October 28, 2006 appellant requested an oral hearing, which was scheduled for October 18, 2006. In an October 13, 2006 letter, appellant's attorney requested a review of the written record and submitted a March 16, 2006 report from Dr. Poetz who advised that he used a goniometer to take range of motion measurements of the right lower extremity. Dr. Poetz stated that appellant had plantar flexion of the right ankle to 20 degrees, dorsiflexion to 0 degrees, inversion of the right foot to 10 degrees and eversion of the right foot to 8 degrees. He noted that the Achilles on the right side was spastic, indurated and irregular feeling. Based on the A.M.A., *Guides*, Dr. Poetz opined that appellant had a total of 30 percent impairment to the right leg. This was comprised of 7 percent impairment in both dorsi and plantar flexion, for a total 14 percent lower extremity impairment; 2 percent impairment in both inversion and eversion, for a total 4 percent impairment; and 12 percent impairment due to the varus deformity.

By decision dated January 5, 2007, an Office hearing representative set aside the October 4, 2005 decision and remanded the case to the Office medical adviser for review of Dr. Poetz's March 16, 2006 report.

In a January 28, 2007 report, the Office medical adviser opined that Dr. Poetz's 30 percent impairment rating was based on unreliable examination findings. He noted that no prior physician had ever reported that appellant had sustained such severe range of motion limitations or that appellant had what Dr. Poetz reported as a varus deformity. The Office medical adviser also noted that Dr. Poetz, in his October 26, 2004 report, had only discussed plantar and dorsiflexion and provided no explanation as to how or why range of motion on plantar and dorsiflexion was now more limited. He also stated that Dr. Poetz's rating was incorrect as range of motion limitations would be combined under the Combines Value Chart of the A.M.A., *Guides*, instead of added to any reported "varus deformity." The Office medical adviser concluded that Dr. Poetz's disability rating was unacceptable.

By decision dated February 27, 2007, the Office denied appellant's claim for an increased schedule award.

LEGAL PRECEDENT

The schedule award provision 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

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

ANALYSIS

Appellant received a schedule award for one percent impairment to his right leg. He subsequently submitted medical reports from Dr. Poetz who stated that he had sustained a total of 30 percent impairment to his right leg. An Office medical adviser reviewed Dr. Poetz's medical reports and determined that the medical evidence from Dr Poetz was not reliable to support greater than the one percent impairment previously awarded.

Although Dr. Poetz's determined that appellant sustained a 30 percent impairment of the right lower extremity, it is not clear how he reached this conclusion utilizing the A.M.A., *Guides*. In his October 26, 2004 and June 7, 2005 reports, Dr. Poetz stated that appellant's impairment rating was calculated under the A.M.A., *Guides*. However, Dr. Poetz provided no range of motion findings by a goniometer⁵ so an impairment finding under the A.M.A., *Guides* could be determined pursuant to the applicable tables in the A.M.A., *Guides*. The Board notes that under Table 17-11, page 537 of the A.M.A., *Guides*, it is possible to have a seven percent impairment due to plantar flexion, but impossible to have a seven percent impairment for loss of dorsiflexion. While Dr. Poetz provided range of motion measurements by a goniometer in his March 16, 2006 report, he failed to explain how he arrived at his 30 percent impairment rating in accordance with reference to the relevant tables of the A.M.A., *Guides*.⁶ The Board notes that under Table 17-11, page 537 of the A.M.A., *Guides*, plantar flexion of the right ankle to 20 degrees equals a seven percent lower extremity impairment while dorsiflexion to 0 degrees equals a zero percent impairment, as opposed to the seven percent impairment rated by Dr. Poetz. Under Table 17-12, page 537 of the A.M.A., *Guides*, a two percent lower extremity impairment is provided for inversion of 10 degrees and eversion of 8 degrees. While Dr. Poetz additionally advised that appellant had a varus deformity, which he rated as a 12 percent impairment, he failed to provide a goniometer reading to support this finding or to provide sufficient information which could be rated under Table 17-13, page 537 of the A.M.A., *Guides*.

The Office medical adviser reviewed the physical findings as reported by Dr. Poetz and found that they were insufficient to support an impairment rating. He noted that Dr. Poetz did not provide measurements using a goniometer in making his impairment ratings on October 26, 2004 and June 7, 2005. Dr. Poetz noted that appellant lacked plantar and dorsiflexion on the right side, indicating loss of range of motion. He subsequently provided range of motion measurements for dorsi and plantar flexion as well as inversion and eversion in a March 16, 2006 report. However, as noted by the Office medical adviser, Dr. Poetz additionally reported that appellant had impairment due to a ratable varus deformity. The Office medical adviser concluded that Dr. Poetz's March 16, 2006 disability rating did not conform with the A.M.A.,

⁴ *Id.*

⁵ See, e.g., American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Figure 17-5 (5th ed. 2001) (notes how the goniometer should be positioned and how motion should be measured for dorsiflexion and plantar flexion of the ankle).

⁶ See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

Guides as it was based on unreliable findings and not consistent with the other medical evidence of record. He noted that Dr. Poetz did not explain how or why appellant's range of motion became more limited or why appellant had a varus deformity when no other evaluator had reported such condition. The Board finds that the Office medical adviser's opinion constitutes the weight of the evidence.⁷ Since appellant already received a schedule award for one percent impairment the Board finds that he has established greater impairment of his right lower extremity.

CONCLUSION

The Board finds that appellant has no more than one percent impairment of his right lower extremity for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 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

⁷ *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).