



On December 3, 2001 appellant filed a claim for a schedule award. In support of her claim, appellant submitted a November 30, 2000 report from Dr. Nicholas Diamond, an attending osteopath, who advised that her lower left leg circumference measured 33 centimeters versus 34 centimeters for the right leg. He also advised that her bilateral lower extremities had a gross motor strength grade of five by five. Dr. Diamond reported that appellant had a 12 percent impairment based on quadriceps muscle weakness of the left leg<sup>1</sup> and an 8 percent impairment for left calf atrophy<sup>2</sup> for a combined impairment rating of 19 percent for the left lower extremity.

By report dated December 20, 2001, an Office medical adviser reviewed Dr. Diamond's findings and rated appellant's impairment under the fifth edition of the A.M.A., *Guides*. The medical adviser determined that appellant had a 12 percent impairment for left leg quadriceps muscle weakness<sup>3</sup> and a 3 percent impairment due to one centimeter of atrophy of the left calf,<sup>4</sup> for a combined total award of 15 percent. The medical adviser noted that Dr. Diamond's 8 percent impairment rating for left calf atrophy was too high as appellant was right-hand dominant and that a centimeter difference in the left side "can be a normal finding."

On January 30, 2002 the Office awarded appellant a schedule award for a 15 percent impairment of the left lower extremity for a total of 43.20 weeks of compensation, to run from November 6, 2000 to September 14, 2001.

On February 15, 2002 appellant, through counsel, requested an oral hearing which was held on September 25, 2002. By decision dated December 9, 2002, an Office hearing representative affirmed the January 30, 2002 decision awarding appellant a 15 percent impairment of the left lower extremity.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act<sup>5</sup> provides compensation for both disability and physical impairment. "Disability" means the incapacity of an employee, because of an employment injury, to earn the wages the employee was receiving at the time of injury.<sup>6</sup> In such cases, the Act compensates an employee for loss of wage-earning capacity. In cases of physical

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<sup>1</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment*, 77, Table 39 (4<sup>th</sup> ed. 1995).

<sup>2</sup> *Id.* at 77, Table 37.

<sup>3</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001) 532, Table 17-8 (5<sup>th</sup> ed. 2001). As of February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards. FECA Bulletin 01-05 (issued January 29, 2001). The Board notes that page 77, Table 39 of the fourth edition of the A.M.A., *Guides* is the same as the fifth edition, 532, Table 17-8.

<sup>4</sup> *Id.* at 530, Table 17-6b.

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Lyle E. Dayberry*, 49 ECAB 369 (1998).

impairment, the Act, under section 8107(a), compensates an employee, pursuant to a compensation schedule, for the permanent loss of use of certain specified members of the body, regardless of the employee's ability to earn wages.<sup>7</sup>

As a claimant seeking compensation under the Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, it is thus, the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of his or her employment injury entitling him or her to a schedule award.<sup>8</sup>

The schedule award provisions of the Act and its implementing regulation<sup>9</sup> 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.

The A.M.A., *Guides* standards for evaluating the impairment of extremities are based primarily on loss of range of motion.<sup>10</sup> However, all factors that prevent a limb from functioning normally, including pain or discomfort, should be considered, together with loss of motion, in evaluating the degree of permanent impairment.<sup>11</sup>

The A.M.A., *Guides*, Chapter 17, provides multiple grading schemes and procedures for determining the impairment of a lower extremity due to gait derangement,<sup>12</sup> muscle atrophy,<sup>13</sup> muscle weakness,<sup>14</sup> arthritis,<sup>15</sup> nerve deficits<sup>16</sup> and other specific pathologies. The A.M.A., *Guides* also provides impairment ratings of the lower extremities for diagnosis-based estimates, including specific disorders of the knee, such as a torn meniscus or meniscectomy.<sup>17</sup> However,

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<sup>7</sup> Renee M. Straubinger, 51 ECAB 667 (2000).

<sup>8</sup> See Raymond E. Gwynn, 35 ECAB 247 (1983).

<sup>9</sup> 20 C.F.R. § 10.404 (1999).

<sup>10</sup> Bernard A. Babcock, Jr., 52 ECAB 143 (2000).

<sup>11</sup> *Id.*

<sup>12</sup> A.M.A., *Guides*, 529, Table 17-5.

<sup>13</sup> *Id.* at 530, Table 17-6.

<sup>14</sup> *Id.* at 532, Table 17-8.

<sup>15</sup> *Id.* at 544, Table 17-31.

<sup>16</sup> *Id.* at 552, Table 17-37.

<sup>17</sup> *Id.* at 545-48, Table 17-33.

the A.M.A., *Guides* precludes combining an atrophy rating with any other rating. Section 17.2d of the fifth edition of the A.M.A., *Guides* specifically states that values for atrophy and muscle weakness are not to be combined.<sup>18</sup>

### **ANALYSIS**

Both Dr. Diamond, appellant's attending osteopath, and the Office medical adviser improperly combined the muscle weakness and atrophy impairment ratings. The Office medical adviser relied on Dr. Diamond's finding of left lower extremity muscle weakness and properly applied the appropriate tables of the A.M.A., *Guides* (5<sup>th</sup> ed. 2001) to find a 12 percent impairment for muscle weakness. Since the muscle weakness rating is greater than the atrophy impairment ratings as noted by Dr. Diamond or the Office medical adviser, appellant is entitled to no more than a 12 percent impairment of the left lower extremity.

### **CONCLUSION**

The medical evidence, represented by the evaluation of Dr. Diamond and review by an Office medical adviser based on the A.M.A., *Guides*, establishes that appellant has no more than a 12 percent impairment of the left lower extremity for which she has received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs' hearing representative dated December 9, 2002 affirmed, as modified.

Issued: February 3, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom

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<sup>18</sup> *Id.* at 530, section 17.2d. Atrophy ratings should not be combined with any of the other three possible ratings of diminished muscle function (gait derangement, muscle weakness, and peripheral nerve injury).

Alternate Member