

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**D.M., Appellant**

**and**

**DEPARTMENT OF JUSTICE, U.S. MARSHALS  
SERVICE, Benton, IL, Employer**

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**Docket No. 07-1815  
Issued: December 20, 2007**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 28, 2007 appellant filed a timely appeal of an April 17, 2007 merit decision of the Office of Workers' Compensation Programs finding that he had no more than an 11 percent impairment of the right lower extremity, for which he received a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

**ISSUE**

The issue is whether appellant has more than an 11 percent impairment of the right lower extremity, for which he received a schedule award.

**FACTUAL HISTORY**

On December 16, 2005 appellant, then a 31-year-old deputy marshal, filed a traumatic injury claim. He alleged that on December 15, 2005 he broke his right ankle when he slipped and fell as he left a prison cell after breaking up a fight between two inmates. By letter dated February 24, 2006, the Office accepted the claim for a closed fractured medial malleus and

authorized right ankle surgery which was performed on December 29, 2005 by Dr. Kenneth T. Tuan, a Board-certified orthopedic surgeon.

In an April 14, 2006 work capacity evaluation, Dr. Tuan stated that appellant could return to his usual work duties with no restrictions. In an April 26, 2006 treatment note, he stated that appellant was doing well following ankle surgery and that he had returned to work during the previous week. Dr. Tuan reported essentially normal findings on physical examination. He opined that appellant had reached maximum medical improvement, noting that he demonstrated an ability to perform full work duties. On April 26, 2006 Dr. Tuan released him from his medical care.

On June 25, 2006 appellant filed a claim for a schedule award.

By letter dated July 28, 2006, the Office requested that Dr. Tuan determine the extent of appellant's permanent impairment of the right ankle due to the December 15, 2005 employment-related injury based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001).

In an August 16, 2006 treatment note, Dr. Tuan reported negative 5 degrees of dorsiflexion, 30 degrees of plantar flexion, 10 degrees of inversion and 5 degrees of eversion. In this treatment note, as well as in an August 17, 2006 report, he opined that appellant sustained a 20 percent impairment of the right lower extremity. In the August 17, 2006 report, Dr. Tuan stated that appellant reached maximum medical improvement on April 26, 2006.

On February 11, 2007 Dr. Benjamin P. Crane, an Office medical adviser, reviewed appellant's case record, including Dr. Tuan's report and medical treatment. He determined that negative 5 degrees of dorsiflexion constituted a seven percent impairment of the right lower extremity and 30 degrees of plantar flexion constituted a zero percent impairment of the right lower extremity (A.M.A., *Guides* 537, Table 17-11). Dr. Crane further determined that 10 degrees of inversion constituted a two percent impairment of the right lower extremity and 5 degrees of eversion also constituted a two percent impairment of the right lower extremity (A.M.A., *Guides* 537, Table 17-12). He added his range of motion impairment ratings to determine that appellant sustained an 11 percent impairment of the right lower extremity. Dr. Crane concluded that appellant reached maximum medical improvement on August 17, 2006 the date that he was released to work without restrictions.

By decision dated April 17, 2007, the Office granted appellant a schedule award for an 11 percent impairment of the right lower extremity based on Dr. Crane's February 11, 2007 opinion.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulations<sup>2</sup> sets forth the number of weeks of compensation to be paid for

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>2</sup> 20 C.F.R. § 10.404.

permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.<sup>3</sup> However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.<sup>4</sup>

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the protocols of the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment. In such cases, the Office may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.<sup>5</sup>

### ANALYSIS

The Office accepted that appellant sustained a closed fractured medial malleus of the right ankle on December 15, 2005. Dr. Tuan, an attending physician, provided an impairment rating, noting that appellant had negative 5 degrees of dorsiflexion, 30 degrees of plantar flexion, 10 degrees of inversion and 5 degrees of eversion. He opined that appellant sustained a 20 percent impairment of the right ankle. However, Dr. Tuan failed to identify which tables and figures of the A.M.A., *Guides* were used to determine the percentage of impairment to appellant's right lower extremity. The Board, therefore, finds that Dr. Tuan's report is insufficient to establish that appellant sustained more than an 11 percent impairment of the right lower extremity.

Dr. Crane, an Office medical adviser, reviewed the findings of Dr. Tuan and applied the A.M.A., *Guides*. He determined that negative 5 degrees of dorsiflexion constituted a seven percent impairment of the right lower extremity and 30 degrees of plantar flexion was not a ratable impairment (A.M.A., *Guides* 53, Table 17-11). Dr. Crane further determined that 10 degrees of inversion and 5 degrees of eversion each constituted a two percent impairment of the right lower extremity (A.M.A., *Guides* 537, Table 17-12). He added the range of motion impairments to determine that appellant sustained a total 11 percent impairment of the right lower extremity.

Dr. Crane properly applied the A.M.A., *Guides* and provided rationale for rating an 11 percent impairment of the right lower extremity. The Board finds that Dr. Crane's opinion represents the weight of the medical evidence of record. Appellant has no more than an 11 percent impairment of the right lower extremity.

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<sup>3</sup> 5 U.S.C. § 8107(c)(19).

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> See *John L. McClanic*, 48 ECAB 552 (1997); see also *Paul R. Evans*, 44 ECAB 646, 651 (1993).

**CONCLUSION**

The Board finds that appellant failed to establish that he has more than an 11 percent impairment to the right lower extremity, for which he received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 17, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 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