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

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| **WILLIAM L. HARRIS, Appellant** | ) | |
| **and** | ) | **Docket No. 05-1356** |
| | ) | **Issued: October 13, 2005** |
| **DEPARTMENT OF THE AIR FORCE, AIR LOGISTICS CENTER, TINKER AIR FORCE BASE, OK, Employer** | ) | |

*Appearances:*
*James R. Linehan, Esq.,* for the appellant
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

### ***JURISDICTION***

On June 10, 2005 appellant filed a timely appeal of the April 28, 2005 merit decision of the Office of Workers' Compensation Programs, which granted him 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 April 28, 2005 schedule award.

### ***ISSUE***

The issue is whether appellant has more than a 15 percent permanent impairment of the right lower extremity for which he received a schedule award.

### ***FACTUAL HISTORY***

On January 21, 2003 appellant, then a 38-year-old supply technician, sustained a traumatic injury when a gust of wind caused a door to slam shut on his right ankle as he was entering his workplace. Appellant underwent surgery on February 14, 2003 to repair a ruptured

right Achilles tendon. The Office accepted appellant's claim for Achilles tendinitis and ruptured right Achilles tendon.

On August 17, 2004 appellant filed a claim for a schedule award. He submitted a July 27, 2004 report from Dr. John W. Willis, a Board-certified family practitioner, who found a 26 percent permanent impairment of the right lower extremity due to decreased range of motion in the ankle. Dr. Willis' physical examination revealed plantar and dorsiflexion of 5 degrees and 10 degrees of inversion and eversion. He also indicated that appellant reached maximum medical improvement in mid-December 2003.

In a September 16, 2004 report, the Office medical adviser noted a discrepancy between Dr. Willis' recent range of motion limitations and previous findings from Dr. Richard J. Langerman, Jr., a Board-certified orthopedic surgeon. On July 18, 2003 Dr. Langerman reported that appellant's "motion [was] good" and in his most recent treatment note of September 16, 2003 he reported that appellant was doing very well, could perform a single toe rise and was able to run one mile. The Office medical adviser indicated that the discrepancy between Dr. Willis' and Dr. Langerman's findings could not be resolved merely by reviewing the record. Therefore, he recommended that appellant be referred to a specialist for further examination and evaluation.

In a report dated January 25, 2005, Dr. Michael S. Smith, a Board-certified physiatrist and Office referral physician, noted that his examination revealed 20 degrees of dorsiflexion, 20 degrees of plantar flexion, 20 degrees inversion and 15 degrees eversion. He also reported a loss of strength and atrophy in the right lower extremity. Appellant reportedly reached maximum medical improvement on December 15, 2003. Dr. Smith explained that appellant had 7 percent impairment for loss of plantar flexion and a 2 percent impairment for loss of inversion. In addition to the range of motion impairments, appellant had a 3 percent impairment for atrophy of the calf and 17 percent impairment for muscle weakness due to abnormal ankle dorsiflexion. Dr. Smith indicated that under the Combined Values Chart the above-noted impairments totaled seven percent impairment of the right lower extremity.[1]

On March 25, 2005 the Office medical adviser reviewed the record and found a 15 percent impairment of the right lower extremity due to atrophy and decreased strength. Although he concurred with Dr. Smith's finding of 3 percent impairment for calf muscle atrophy, he explained that Dr. Smith's 17 percent impairment for muscle weakness represented an impairment of the foot, not the lower extremity. The correct lower extremity impairment for muscle weakness due to ankle dorsiflexion was 12 percent. The Office medical adviser also noted that impairment for decreased motion could not be combined with impairment for muscle weakness. Therefore, he excluded the nine percent impairment for loss of plantar flexion and inversion.

On April 28, 2005 the Office granted a schedule award for 15 percent impairment of the right ankle. The award covered a period of 43.2 weeks from December 15, 2003 to October 12, 2004.

[1] The seven percent notation appears to be a typographical error.

## ***LEGAL PRECEDENT***

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[2] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.[3] Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).[4]

## ***ANALYSIS***

Appellant's counsel argued that the Office should have based its April 28, 2005 schedule award on Dr. Willis' July 27, 2004 finding of 26 percent permanent impairment due to decreased range of motion in the ankle. However, the Office medical adviser reasonably questioned Dr. Willis' range of motion findings given that appellant's most recent prior examinations revealed he was doing very well, had good range of motion, could perform a single toe rise and was able to run one mile. Dr. Smith's January 25, 2005 examination findings revealed an improved range of motion from what Dr. Willis reported just six months earlier. There is nothing in the record that would explain or otherwise justify Dr. Willis' inconsistent findings on physical examination. As such, the Office reasonably relied on Dr. Smith's January 25, 2005 examination results as a basis for calculating appellant's permanent impairment.

The Office medical adviser reviewed Dr. Smith's January 25, 2005 report and correctly noted that Table 17-2, A.M.A., *Guides* at 526, prohibited combining impairments for loss of range of motion with impairments for muscle atrophy or muscle strength. Dr. Smith's examination revealed abnormal ankle dorsiflexion strength of 4/5 on the right compared to 5/5 on the left. He reported 17 percent impairment under Table 17-8, A.M.A., *Guides* at 532. However, the Office medical adviser correctly noted that the 17 percent impairment noted by Dr. Smith represented an impairment of the foot rather than the lower extremity. The appropriate lower extremity impairment for Grade 4 strength due to ankle dorsiflexion is 12 percent.[5] Because the loss of range of motion impairment was less favorable to appellant than

[2] The Act provides that for a total, or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

[3] 20 C.F.R. § 10.404 (1999).

[4] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (January 29, 2001).

[5] A.M.A., *Guides* 532, Table 17-8.

the impairment for muscle weakness, the Office medical adviser properly selected the latter method as the preferred method for determining appellant's impairment.[6]

Dr. Smith also found impairment due to calf muscle atrophy. His January 25, 2005 examination revealed that the circumference of appellant's right calf was one centimeter (cm) less than the circumference of his left calf. According to Table 17-6, A.M.A., *Guides* 530, a 1 to 1.9 cm difference in calf circumference represents a mild impairment within the range of 3 to 8 percent of the lower extremity. As appellant's one cm difference was at the low end of the range, both Dr. Smith and the Office medical adviser assigned three percent impairment for leg muscle atrophy under Table 17-6. Although the A.M.A., *Guides* preclude a combination of impairments for muscle atrophy and muscle weakness, the Office medical adviser found that appellant had a combined impairment of 15 percent for the right lower extremity.[7]

The probative medical evidence of record establishes that appellant is entitled to a schedule award for 12 percent impairment of the right lower extremity. The Office has already paid appellant for 15 percent impairment of the right lower extremity and he has not submitted any credible medical evidence indicating that he has greater than a 15 percent impairment.

## ***CONCLUSION***

The Board finds that appellant failed to establish that he has more than a 15 percent permanent impairment of his right lower extremity.

[6] Based on Dr. Smith's examination findings appellant demonstrated a combined nine percent right lower extremity impairment for loss of plantar flexion and inversion. *See* A.M.A. *Guides* 537, Tables 17-11, 17-12.

[7] *See* A.M.A. *Guides* 526, Table 17-2; A.M.A., *Guides* 530, section 17.2d; A.M.A., *Guides* 533, Example 17-6.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the April 28, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board