

ankle fracture, consisting of open reduction and internal fixation. On November 20, 2002 appellant underwent surgical removal of the lateral malleolar hardware in his left ankle and exploration and decompression of anterolateral ankle tibia-fibular impingement. On March 17, 2004 he filed a claim for a schedule award.

In a December 9, 2003 report, Dr. David Weiss, an osteopath, provided a history of appellant's condition and findings on physical examination. He stated:

“There is tenderness noted over the lateral malleolus. There is focal tenderness over the anterior talofibular ligament. There is exquisite tenderness over the lateral gutter. There is tenderness over the anterior 1/3 of the medial malleolus. Range of motion reveals dorsiflexion is 0 degrees and ankylosed, plantar flexion is from 0-30/55 degrees from the neutral plane, inversion of 0-20/35 degrees, eversion of 0-10/20 degrees. There is crepitation noted on active range of motion. There is a positive impingement sign over the sinus tarsi....

“Sensory examination fails to reveal any perceived sensory deficit over the left foot.”

* * *

“[Appellant] [has] persistent left foot and ankle pain and stiffness. He notes numbness in his left foot.”

* * *

“[Appellant] ambulates with a noticeable left lower extremity limp. He cannot perform either calcaneal or equinus gait ... due to his left ankle.”

Dr. Weiss determined that appellant had a 14 percent permanent impairment of the left lower extremity based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, the A.M.A., *Guides*) (5th ed. 2001), which included 7 percent for 0 degrees of dorsiflexion (extension) of the left ankle, based on Table 17-11 at page 537 of the A.M.A., *Guides*, 2 percent each for decreased inversion and eversion, based on Table 17-12 at page 537 (for 20 degrees and 10 degrees, respectively) and 3 percent for pain-related impairment¹ based on Figure 18-1 at page 574.

In an April 22, 2004 memorandum, the Office medical adviser opined that it was improper to include separate impairment calculations for inversion and eversion. He did not explain the basis or authority for his opinion. The Office medical adviser determined that appellant had a 12 percent impairment of the left lower extremity, which included 7 percent for decreased dorsiflexion (extension) of 0 degrees, according to Table 17-11 at page 537 of the A.M.A., *Guides*, 2 percent for decreased inversion and eversion of 20 degrees and 10 degrees,

¹ Dr. Weiss noted that appellant described his pain level as 3 or 4 on a 10-point scale.

respectively, according to Table 17-12 at page 537 and 3 percent for pain, according to Figure 18-1 at page 574.

By decision dated May 3, 2004, the Office granted appellant a schedule award for the period December 9, 2003 to August 6, 2004, finding a 12 percent permanent impairment of the left lower extremity.

Appellant requested a hearing that was held on February 14, 2005.

By decision dated May 9, 2005, the Office hearing representative affirmed its May 3, 2004 decision.

LEGAL PRECEDENT

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulation³ sets 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.⁴ Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁵

ANALYSIS

The Board finds that this case is not in posture for a decision. The case requires further development of the medical evidence.

Dr. Weiss determined that appellant had a 14 percent permanent impairment of the left lower extremity, which included 7 percent for decreased dorsiflexion of the left ankle (0 degrees), based on Table 17-11 at page 537 of the A.M.A., *Guides*, 2 percent each for decreased inversion and eversion, based on Table 17-12 at page 537 (20 degrees and 10 degrees,

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

respectively), and 3 percent for pain-related impairment based on Figure 18-1 at page 574.⁶ However, Dr. Weiss did not support, with medical rationale, his calculation of a 3 percent impairment based on Chapter 18 of the A.M.A., *Guides*. Section 18.3b of Chapter 18 at page 571 of the fifth edition of the A.M.A., *Guides* provides that “Examiners should not use this chapter to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters of the [A.M.A.] *Guides*.”⁷ Dr. Weiss found that appellant had persistent left foot and ankle pain. However, he did not explain why appellant’s pain-related impairment could not be adequately addressed by applying Chapter 17 of the A.M.A., *Guides* which addresses lower extremity impairment, specifically section 17.21, “Peripheral Nerve Injuries” which states that, “ Partial sensory and motor deficits should be rated as in the upper extremity (Tables 16-10 and 16-11).” Table 16-10 explains the correct method for calculating impairment due to sensory deficits or pain resulting from peripheral nerve disorders. Dr. Weiss did not explain why application of Chapter 17 was not adequate to calculate appellant’s impairment due to lower extremity pain, justifying application of Chapter 18 of the A.M.A., *Guides*. In turn, the Office medical adviser incorporated the pain rating under Chapter 18 without providing an explanation of the policies incorporated in FECA Bulletin No. 01-5. Therefore, further development of the medical evidence is required to establish the degree of appellant’s left lower extremity impairment.

CONCLUSION

The Board finds that this case requires further development of the medical evidence. On remand, the Office should refer appellant to Dr. Weiss or another appropriate medical specialist for an evaluation of permanent impairment caused by the November 9, 2001 employment injury and an impairment rating based on a proper application of the fifth edition of the A.M.A., *Guides*. Following such further development as the Office deems necessary, it should issue a *de novo* decision.

⁶ The Office medical adviser applied the findings in the report of Dr. Weiss and concluded that appellant had a 12 percent impairment of the left lower extremity. See Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present). He opined that appellant was not entitled to separate impairment calculations for inversion and eversion. However, Table 17-12 at page 537 of the A.M.A., *Guides* provides for separate impairment ratings for inversion and eversion, as does Figure 17-10 at page 561, the “Lower Extremity Impairment Evaluation Record and Worksheet.”

⁷ See also FECA Bulletin No. 01-05, issued January 29, 2001.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 9, 2005 is set aside. The case is remanded for further action consistent with this decision.

Issued: February 2, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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