

granted schedule awards on December 18, 1995 and November 9, 1999 for a total impairment of 10 percent of the right lower extremity.¹ Appellant also has an accepted occupational disease claim for bilateral tarsal tunnel syndrome, which arose on or about February 9, 2001 (A11-2003890). He underwent a left tarsal tunnel decompression on February 15, 2001 and a similar procedure was performed on the right foot on April 10, 2001. The Office authorized both surgical procedures.

On March 15, 2002 appellant filed a claim for a schedule award. The file number identified on the claim form was A11-0128318. By letter dated April 2, 2002, the Office requested an impairment rating from appellant's podiatrist, Dr. H. John Visser, who performed the February 15 and April 10, 2001 surgical procedures. The Office's correspondence referenced file number A11-2003890. Dr. Visser responded on April 15, 2002 noting that appellant had recovered completely from both surgeries and there was no disability, pain or discomfort.

On August 21, 2003 the Office referred appellant for an orthopedic evaluation to determine whether he was eligible for a schedule award. In a report dated September 9, 2003, Dr. Daniel G. Sohn, a Board-certified orthopedic surgeon and Office referral physician, calculated a 19 percent impairment of the right lower extremity and an 11 percent impairment of the left lower extremity.² The Office medical adviser reviewed Dr. Sohn's findings and concurred with his impairment rating. However, the medical adviser also reviewed appellant's prior schedule awards for his right lower extremity and found that because appellant had already received a 10 percent award, he was only entitled to an additional 9 percent impairment for the right lower extremity.

On November 18, 2003 the Office granted appellant schedule awards for a 9 percent additional impairment of the right lower extremity and an 11 percent impairment of the left lower extremity. The awards covered a period of 57.6 weeks, beginning May 2, 2001 and continuing through June 9, 2002. The decision referenced file number A11-0128318, with a date of injury of September 23, 1993.

Appellant requested a review of the written record. In a decision dated February 18, 2004, an Office hearing representative set aside the November 18, 2003 schedule award. The hearing representative found that the November 18, 2003 schedule award was issued under the wrong claim number (A11-0128318) and it was more likely that appellant filed for a schedule award under his approved claim for bilateral tarsal tunnel syndrome (A11-2003890). She also noted that Dr. Sohn's report had not been associated with the case file before her and she could

¹ The December 18, 1995 schedule award for four percent impairment of the right lower extremity was affirmed by an Office hearing representative in a decision dated February 11, 1997.

² Dr. Sohn issued two reports dated September 9, 2003. He originally calculated a four percent left lower extremity impairment and an eight percent right lower extremity impairment. On September 12, 2003 the Office medical adviser requested clarification from Dr. Sohn and suggested that he perhaps consulted the incorrect tables and columns. He also requested that Dr. Sohn include measurements for ankle inversion and eversion. On October 27, 2003 the Office received Dr. Sohn's amended report, which identified 19 percent right lower extremity impairment and an 11 percent impairment of the left lower extremity. However, he did not change the date of his report.

not determine whether the Office medical adviser's impairment ratings were supported by the record. Accordingly, the hearing representative remanded the case with instructions for the Office to reissue the schedule award under the appropriate claim number and associated file.

In a decision dated March 8, 2004, the Office granted appellant schedule awards for an additional 9 percent impairment of the right lower extremity and an 11 percent impairment of the left lower extremity. The Office explained that the awards were issued under claim number A11-2003890.

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.³ 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.⁴ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁵

ANALYSIS

The March 8, 2004 schedule award was calculated based on appellant's loss of range of motion in his lower extremities. In a September 9, 2003 report, Dr. Sohn reported 5½ degrees of left dorsiflexion and -1 degree of right dorsiflexion. Based on these measurements, he found a 7 percent impairment of the left lower extremity and a 15 percent impairment of the right lower extremity under Table 17-11, A.M.A., *Guides*, 537. Dr. Sohn also provided measurements of hind foot inversion and eversion. He reported 10 degrees of inversion on the right and 5 degrees of eversion. For the left foot he noted 18 degrees of inversion and 2 degrees of eversion. Pursuant to Table 17-12, A.M.A., *Guides*, 537, the range of motion deficits for eversion and inversion represented an additional lower extremity impairment of 4 percent bilaterally. The hind foot impairments, when added to the ankle motion impairments under Table 17-11, represented a total impairment of 11 percent for the left lower extremity and 19 percent for the right lower extremity. Additionally, Dr. Sohn found that appellant had no significant weakness, no gait derangement and no ankylosis. He reported that appellant's strength was normal and there did not appear to be muscular wasting. Measurements of his bilateral plantar flexion were normal. The Office medical adviser reviewed Dr. Sohn's report and concurred with his findings. Appellant has not submitted any medical evidence indicating that he has more impairment than that reported by Dr. Sohn and the Office medical adviser.

³ The Act provides that for a total of 100 percent loss of use of a leg, an employee shall receive 288 weeks compensation. 5 U.S.C. § 8107(c)(2).

⁴ 20 C.F.R. § 10.404 (1999).

⁵ FECA Bulletin No. 01-05 (January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

The Office medical adviser's impairment calculation conforms to the A.M.A., *Guides* (5th ed. 2001) and his estimate constitutes the weight of the medical evidence.⁶ Because appellant had previously received schedule awards for 10 percent impairment of his right lower extremity, the Office properly awarded him only an additional 9 percent.⁷ There is no evidence of more than 11 percent impairment of the left lower extremity.

CONCLUSION

The Board finds that appellant failed to establish that he has more than a 9 percent additional impairment of the right lower extremity and greater than an 11 percent impairment of the left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

⁷ *Mike E. Reid*, 51 ECAB 543, 547-48 (2000).