

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNIE F. PARKS and DEPARTMENT OF DEFENSE,
DEFENSE SUPPLY CENTER, Columbus, OH

*Docket No. 03-2113; Submitted on the Record;
Issued January 16, 2004*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has more than a six percent permanent impairment of her right lower extremity for which she received a schedule award.

Appellant, a 48-year-old procurement technician, filed a notice of traumatic injury on July 16, 1997 alleging that on July 3, 1997 she tripped while in the performance of duty injuring her right foot and ankle. The Office of Workers' Compensation Programs accepted appellant's claim for right ankle sprain on August 13, 1997.

Appellant requested a schedule award on September 7, 2000. On May 14, 2001 Dr. Martin Fritzhand, a fellow of the American Academy of Disability Evaluating Physicians and Board-certified urologist, examined appellant and opined that she had a 36 percent impairment of her right lower extremity in accordance with the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

The Office requested a second opinion evaluation from Dr. Rudolf Hofmann, a Board-certified orthopedic surgeon, on June 11, 2002. In a report dated July 9, 2002, Dr. Hofmann concluded that appellant had a nine percent permanent impairment of her right lower extremity due to her accepted employment injury. The Office medical adviser reviewed the medical evidence on August 28, 2002 and concluded that appellant had a six percent permanent impairment of her right lower extremity. The Office granted appellant a schedule award for a six percent permanent impairment of her right lower extremity on September 20, 2002.

Appellant, through her attorney, requested an oral hearing. Appellant's attorney presented argument at the oral hearing on May 5, 2003. By decision dated July 14, 2003, the hearing representative affirmed the Office's September 20, 2002 decision.

The Board finds that this case is not in posture for decision.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² 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.³

Dr. Fritzhand noted appellant's history of injury and provided his findings on physical examination. Dr. Fritzhand stated that appellant had five degrees of right plantar flexion; five degrees of inversion; and zero degrees of eversion. He noted that appellant's muscle strength was 4+/5, that appellant's right Achilles tendon reflex was absent and that she walked with a limping gait. He concluded that applying the fourth edition of the A.M.A., *Guides*, appellant had a 36 impairment of the right lower extremity. Dr. Fritzhand did not provide any correlation between his physical findings and specific tables or rating protocols of the A.M.A., *Guides*.

The fifth edition of the A.M.A., *Guides* provides that plantar flexion of 5 degrees is a moderate impairment of ankle ranging from 1 to 10 degrees, a 15 percent impairment of the lower extremity.⁴ Inversion of five degrees is moderate and severe impairment of the hindfoot ranging from zero to nine degrees and a five percent impairment of lower extremity.⁵ Eversion of 0 degrees is a mild hindfoot impairment ranging from 0 to 10 degrees and a 2 percent of the lower extremity.⁶ Applying the fifth edition of the A.M.A., *Guides* to Dr. Fritzhand's physical findings, appellant would have a 15 percent impairment due to loss of plantar flexion; a 5 percent impairment due to loss of inversion and a 2 percent impairment due to loss of eversion.

Dr. Fritzhand did not correlate his other findings of loss of muscle strength, loss of tendon reflex and appellant's gait to the A.M.A., *Guides*. Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ The Office has determined that all schedule awards determined after February 1, 2001 should be based on the fifth edition of the A.M.A., *Guides*. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (August 2002).

⁴ A.M.A., *Guides*, 537, Table 17-11.

⁵ *Id.* at 537, Table 17-12.

⁶ *Id.*

resulting restrictions and limitations.⁷ The Board is unable to determine any impairment ratings beyond loss of range of motion based on Dr. Fritzhand's report.

Dr. Hofmann noted appellant's history of injury, found that appellant had reached maximum medical improvement on January 3, 1998 and concluded that appellant had a nine percent impairment of her right lower extremity due to loss of range of motion. He found that appellant had negative 5 degrees of extension, 45 degrees of flexion, 15 degrees of inversion and 5 degrees of eversion. Applying the fifth edition of the A.M.A., *Guides* to these figures, there is no impairment rating for extension of less than 0 degrees⁸ and flexion of 45 degrees is not a ratable impairment.⁹ Appellant demonstrated 15 degrees of inversion, a mild impairment of the hindfoot ranging from 10 to 20 degrees with an impairment rating of 2 percent of the lower extremity.¹⁰ Appellant also demonstrated 5 degrees of eversion, a mild impairment of the hindfoot ranging from 0 to 10 degrees and encompassing 2 percent impairment of the lower extremity.¹¹ Applying the A.M.A., *Guides*, fifth edition, to Dr Hofmann's report appellant had a permanent impairment of four percent due to loss of range of motion which does not correlate with his conclusion that appellant had a nine percent permanent impairment of her right lower extremity.

The Office medical adviser reviewed the medical evidence of record on August 28, 2002, concluded that appellant reached maximum medical improvement on January 3, 1998 and found that appellant had dorsiflexion or extension of five degrees, and concluded that this was a three and one half percent impairment. The Board is unable to determine how the medical adviser made this findings. Dr. Fritzhand did not provide a range of motion for extension and Dr. Hofmann indicated that appellant had negative five degrees of extension rather than five degrees. The A.M.A., *Guides* provide that the values in the ranges are not extrapolated when the motion is within the range.¹² If a claimant has an impairment within the range of motion specified by the A.M.A., *Guides*, the employee would be entitled to the percentage of impairment provided in the applicable tables.

The Office medical adviser found that 45 degrees of plantar flexion was not a ratable impairment and that appellant had a 1 percent impairment due to 5 degrees of eversion, a 2 percent impairment in accordance with the A.M.A., *Guides*,¹³ and a 1 percent impairment due to

⁷ *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

⁸ A.M.A., *Guides*, 537, Table 17-11.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 538, Example 17-7.

¹³ *Id.* at 537, Table 17-12.

15 degrees of inversion, a 2 percent impairment.¹⁴ The Office medical adviser did not explain why he selected the findings of Dr. Hofmann over those of Dr. Fritzhand.

Due to the discrepancies between the physical findings of Dr. Fritzhand and the findings of Dr. Hofmann, the Board finds that the case requires further development of the medical evidence.

Proceedings before the Office are not adversarial in nature and the Office is not a disinterested arbiter; in a case where the Office “proceeds to develop the evidence and to procure medical evidence, it must do so in a fair and impartial manner.”¹⁵ In this case, appellant submitted medical evidence, including detailed range of motion findings. As appellant’s physician applied the incorrect version of the A.M.A., *Guides* and did not fully describe how he reached his impairment rating of 36 percent, the Office properly referred appellant for a second opinion evaluation. However, the report of Dr. Hofmann, the second opinion physician, and the review of the physician’s findings by the Office medical adviser did not properly apply the A.M.A., *Guides*. Dr. Hofmann stated that he had applied the A.M.A., *Guides* to his findings; however, he failed to provide a detailed explanation of how he reached his impairment rating. The Office medical adviser reviewed Dr. Hofmann’s report to conclude that appellant had a six percent permanent impairment. The Office medical adviser did not provide an explanation for relying on the range of motion findings of Dr. Hofmann and did not appropriately apply the A.M.A., *Guides* to the findings. The Office should undertake further development of the medical evidence in this case referring appellant for additional evaluation to determine the extent of her permanent impairment as a result of her accepted employment injury in accordance with the A.M.A., *Guides*, fifth edition. After this and such other development as deemed necessary, the Office should issue an appropriate decision.

¹⁴ *Id.* at 537, Table 17-12.

¹⁵ *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

The July 14, 2003 and September 20, 2002 decisions of the Office of Workers' Compensation Programs are hereby set aside and remanded for further development consistent with this opinion of the Board.

Dated, Washington, DC
January 16, 2004

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member