



fracture of the right hip. Appellant's claim for a recurrence as of February 25, 2000, was accepted by the Office on September 30, 2000.

On February 15, 2002 appellant filed a claim for a schedule award and submitted a January 3, 2002 medical report from Dr. David Weiss, an osteopath. He examined appellant on November 14, 2001 and reviewed the reports of Dr. Gentile. Dr. Weiss listed range of motion measurements and the circumference of the quadriceps, which at 10 centimeters above the patella measured 33 centimeters on the right versus 34 centimeters on the left. Dr. Weiss opined:

“The work-related injury of March 31, 1999, was the competent producing factor for the claimant's subjective and objective findings of today.

“The following is a rating of this [appellant's] impairment on the basis of [American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)] [f]ifth [e]dition:

“For right thigh atrophy = 8 percent [Table 17-6, page 530]

“For the pain related impairment = 3 percent [Figure 18-1, page 574]

“Total right lower extremity = 11 percent.”

On April 17, 2002 an Office medical adviser reviewed the report of Dr. Weiss and determined that appellant had a six percent impairment to the right lower extremity. He noted that pain, specifically tenderness over the trochantara, represented three percent impairment pursuant to Table 18.1, page 574. For atrophy, the Office medical adviser noted that, pursuant to Table 17-6 on page 530 of the A.M.A., *Guides*, the difference in circumference of the thigh as measured 10 centimeters above the patella of 1 to 1.9 centimeters represented impairment of the lower extremity of between 3 to 8 percent. He noted that as the difference in measurement in appellant's case was one centimeter, the impairment rating should be at the lower end of that range, or three percent. Combining the two impairment values together, he concluded that appellant had a six percent impairment of the right lower extremity.

On April 19, 2002 the Office issued a schedule award for a six percent impairment to appellant's right lower extremity.

By letter dated April 24, 2002, appellant requested a hearing and resubmitted Dr. Weiss' report of January 3, 2002. In a March 25, 2002 note, Dr. Gentile indicated his agreement with Dr. Weiss and his opinion that appellant had an 11 percent impairment of the right lower extremity.

At the June 18, 2003 hearing, appellant's attorney argued that as there was a conflict between appellant's physician and the Office medical adviser as to the extent of appellant's impairment. By decision dated August 22, 2003, the hearing representative affirmed the April 19, 2002 schedule award, finding that appellant had no more than a six percent impairment of the right lower extremity.

## LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act<sup>1</sup> and section 10.404 of the implementing federal regulation,<sup>2</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. However, the Act does not specify the manner, in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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*<sup>3</sup> has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>4</sup>

## ANALYSIS

In the instant case, Dr. Weiss opined that appellant had an 11 percent impairment of the right lower extremity. The Office medical adviser, after reading the opinion of Dr. Weiss, concluded that appellant's impairment was six percent. Dr. Weiss and the Office medical adviser agreed that under Figure 18-1, page 574, appellant's pain was rated 3 percent. The difference between the physicians' conclusions pertains to the impairment rating due to unilateral leg muscle atrophy in Table 17-6 on page 530 of the A.M.A., *Guides*. Dr. Weiss measured the circumference of appellant's quadriceps 10 centimeters above the patella as 33 centimeters on the right compared to 34 centimeters on the left, a difference of 1 centimeter. Pursuant to Table 17-6, a difference in circumference of between 1 to 1.9 centimeters allows for an impairment rating of 3 to 8 percent of the lower extremity. Dr. Weiss rated appellant's impairment as 8 percent, high end of the allowable range. The Office medical adviser, rated the impairment as three percent rating, stating that as the difference in circumference was only one centimeter, the impairment value on the low end of the range should apply.

The Board finds that the 11 percent impairment as found by Dr Weiss represents appellant's permanent impairment under the A.M.A., *Guides*. The Office's procedures provide that the "attending physician should make the evaluation whenever possible."<sup>5</sup> The Board has recognized that an attending physician, who has an opportunity to examine appellant, is often in a better position to make certain judgments regarding schedule awards.<sup>6</sup> Dr. Weiss provided a

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (2002).

<sup>3</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB \_\_\_\_ (Docket No. 01-1361, issued February 4, 2002).

<sup>4</sup> See *Joseph Lawrence, Jr.*, *supra* note 3; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (August 2002). The procedure manual notes that when the A.M.A., *Guides* ask for a percentage within a range, the physician may be asked why he assigned a particular percentage of impairment. In this case, Dr. Weiss was not asked for a further explanation.

<sup>6</sup> See *Richard Giordano*, 36 ECAB 134, 139 (1984); see also *Joseph H. Stuart*, Docket No. 92-1339 (issued March 12, 1993), where the opinion of the attending physician took precedent over an Office medical adviser.

percentage impairment and explained how the percentage was derived under the A.M.A., *Guides*. The Board finds that Dr. Weiss properly utilized the A.M.A., *Guides* and his opinion represents the weight of the evidence in this case.

**CONCLUSION**

The Board finds that appellant has an 11 percent impairment of the right lower extremity

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 18, 2003 is affirmed, as modified to reflect an 11 percent impairment of the right lower extremity.

Issued: June 2, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member