

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

BOBBY E. SPIVEY, Appellant

and

**DEPARTMENT OF THE ARMY, ALABAMA
NATIONAL GUARD, Montgomery, AL,
Employer**

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**Docket No. 05-1490
Issued: December 1, 2005**

Appearances:
Bobby E. Spivey, pro se
Office of Solicitor, for the Director,

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 6, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated June 23, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award determination.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he is entitled to a schedule award.

FACTUAL HISTORY

On October 29, 2004 appellant, then a 54-year-old automotive mechanic supervisor, filed an occupational disease claim alleging that the bottoms of his feet hurt due to wearing steel-toed boots and walking on cement floors for long periods of time. He also alleged that he had to

climb up, down and under vehicles and squat for long periods of time in the performance of duty. Appellant retired on March 19, 2004.¹

On January 7, 2005 the Office accepted appellant's claim for bilateral inferior calcaneal spurs, bilateral plantar fasciitis and bilateral periostitis. Appellant received appropriate compensation benefits. On January 13, 2005 appellant filed a claim for a schedule award.

By letter dated January 19, 2005, the Office requested that appellant's physician, Dr. Gregory V. Dubay, a podiatrist, provide an opinion regarding appellant's work-related condition. The Office advised the physician that he needed to utilize the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5th ed. 2001) hereinafter A.M.A., *Guides* and provide an opinion regarding whether appellant was entitled to an impairment rating, and if so, the percentage of impairment with an explanation of how the calculation was derived. The Office did not receive a response.

By decision dated June 23, 2005, the Office denied appellant's claim for a schedule award.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act² 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁴ The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

ANALYSIS

The evidence of record is insufficient to establish that appellant is entitled to a schedule award in accordance with the fifth edition of the A.M.A., *Guides*.

By letter dated January 19, 2005, the Office requested that Dr. Dubay submit a report in which he described appellant's condition and determine whether he had any permanent impairment. Appellant was also provided a copy of this letter. However, Dr. Dubay did not respond and appellant did not submit any medical reports from a physician explaining how his

¹ The Board notes that appellant has a separate claim for hearing loss. That claim was denied on appeal by the Board. Docket No. 03-587 (issued May 2, 2003).

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8107.

⁴ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁵ 20 C.F.R. § 10.404.

accepted conditions of bilateral inferior calcaneal spurs, bilateral plantar fasciitis and bilateral periostitis of the feet resulted in any permanent impairment. The Office evaluates schedule award claims pursuant to the standards set forth in the A.M.A., *Guides*. Appellant has the burden of proof to submit medical evidence supporting that he has permanent impairment of a scheduled member of the body.⁶ As such evidence has not been submitted, appellant has not established entitlement to a schedule award.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 23, 2005 is affirmed.

Issued: December 1, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

⁶ See *Annette M. Dent*, 44 ECAB 403 (1993).