

appellant's claim for aggravation of bilateral heel spurs and aggravation of bilateral plantar fasciitis. The Office paid all appropriate medical and compensation benefits.

On July 18, 2001 appellant claimed a schedule award. In support of her claim, she submitted a June 5, 2001 report from Dr. David Weiss, an osteopath, who noted a history of her work-related injuries concerning her lower extremities and the treatment obtained. In his report, Dr. Weiss noted appellant's subjective complaints and described in detail his physical examination of appellant's knees, calf, feet and hips. He opined that maximum medical improvement was attained on June 5, 2001. He also advised that he utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ and provided the following impairment ratings. Under Table 17-6, page 530, an eight percent impairment was assessed for right calf atrophy. Under Figure 18-1, page 574, a three percent impairment was assessed for the pain-related impairment. This resulted in a total right lower extremity impairment of 11 percent. Under Table 17-8, page 532, a 12 percent impairment was assessed for the 4/5 motor strength deficit quads (knee extension). And, under Figure 18-1, page 574, a 3 percent impairment was assessed for pain. This resulted in a total left lower extremity impairment of 15 percent.

On February 5, 2003 the Office medical adviser reviewed Dr. Weiss' report and concluded that appellant reached maximum medical improvement on June 5, 2001. Utilizing the fifth edition of the A.M.A., *Guides*, the Office medical adviser concluded that appellant had a 15 percent total left lower extremity impairment. This was comprised of a 12 percent impairment for a 4/5 quad strength under Table 17-8, page 532; a 0 percent impairment for a 0 to 120 degree reflex under Table 17-10, page 537, and a 3 percent pain-related impairment under Figure 18-1, page 574. The Office medical adviser also concluded that appellant had a six percent right lower extremity impairment. He noted that, under Table 17-6(b), page 530, a three percent impairment rating was assessed for a one centimeter atrophy of the right calf as the impairment value was at the lower end of the range. A three percent impairment rating was also assessed for a pain-related impairment under Figure 18-1, page 574.

By decision dated April 29, 2003, the Office granted appellant a schedule award for a nine percent total extremity reward, which comprised of a six percent impairment rating for the right lower extremity and a three percent impairment rating for the left lower extremity. The Office noted that, although appellant was awarded a 15 percent left lower extremity impairment pursuant to the Office medical adviser's February 5, 2003 calculations, she had been previously awarded and paid a 12 percent left lower extremity impairment under case number 020660072 and, thus, was only entitled to the additional 3 percent.

On May 2, 2003 appellant requested a hearing which was held on November 18, 2003. By decision dated February 5, 2004, an Office hearing representative affirmed the April 29, 2003 decision.

¹ The Board notes that, although Dr. Weiss advised that he utilized the fourth edition of the A.M.A., *Guides*, he properly cited to the relevant portions in the fifth edition of the A.M.A., *Guides*.

LEGAL PRECEDENT

The schedule award provision 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. As of February 1, 2001, all new schedule awards are based on the fifth edition of the A.M.A., *Guides*.⁴

ANALYSIS

The Office relied upon the Office medical adviser's opinion in awarding a 15 percent left lower extremity impairment and a 6 percent right lower extremity impairment. A review of the medical adviser's calculations for the left lower extremity, as noted above, reflect that appellant had a 12 percent award for relevant anatomic, functional and/or diagnostic based impairment evaluations under Chapter 17 of the A.M.A., *Guides*. This was in agreement with calculations from Dr. Weiss and there is no evidence in conformance with the A.M.A., *Guides* indicating greater impairment under Chapter 17.

The medical adviser, concurring with Dr. Weiss, also allowed three percent impairment for pain in the left leg pursuant to page 574 of Chapter 18 of the A.M.A., *Guides*. However, according to section 18.3b of the A.M.A., *Guides*, "examiners should not use this chapter to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*."⁵ Office procedures provide that Chapter 18 is not to be used in combination with other methods to measure impairment due to sensory pain (Chapters 13, 16 and 17).⁶

Accordingly, the Board finds that, as the evidence supports that appellant has a 12 percent permanent impairment of the left upper extremity, appellant has not established entitlement to a schedule award greater than the 15 percent previously awarded by the Office.

For the right lower extremity, appellant received a three percent award for her right calf atrophy condition under Chapter 17 of the A.M.A., *Guides*, as noted above, and also received a three percent award for pain impairment under Chapter 18. Regarding the right lower extremity,

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Rose V. Ford*, 55 ECAB ____ (Docket No. 04-15, issued April 6, 2004). See FECA Bulletin No. 01-05 (issued January 29, 2001).

⁵ Section 18.3b, page 571, A.M.A., *Guides* (5th ed., 2001).

⁶ See FECA Bulletin No. 01-05 (issued January 31, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

appellant asserts on appeal that there is an unresolved conflict in the medical opinion evidence between Dr. Weiss and the Office medical adviser necessitating resolution of the conflict by referral to an impartial medical specialist.⁷ However, as correctly determined by the Office hearing representative in her February 5, 2004 decision, Dr. Weiss did not base his evaluation of appellant's permanent impairment on correct application of the A.M.A., *Guides* with regard to the amount assessed for the right calf atrophy condition. Although Dr. Weiss utilized the fifth edition of the A.M.A., *Guides* and cited to Table 17-6, page 530 which provides a range of a 3 to 8 percent impairment for a 1 to 1.9 centimeter difference between the calf of the normal side compared to the affected side, he did not explain why the maximum impairment rating of 8 percent was afforded when his examination showed only a 1 centimeter difference between appellant's left and right calf. The Office medical adviser, however, applied the A.M.A., *Guides* and reasoned that, since appellant only had one centimeter of atrophy for her right calf, the lower impairment value, or three percent, was assessed. Thus, the Office medical adviser's report was sufficient to evaluate the degree and extent of appellant's permanent impairment for purposes of a schedule award determination. As Dr. Weiss's report was not sufficiently rationalized with respect to the atrophy of the right calf, it is not of equal weight to the Office medical adviser's report. For these reasons, there is no conflict between Dr. Weiss and the Office medical adviser. The Board has held that a conflict exists in the medical evidence between a claimant's physician and the government's physician only when there are opposing medical reports of virtually equal weight and rationale.⁸ Although appellant was also awarded a three percent award for a pain impairment under Chapter 18, as previously discussed, Chapter 18 should not be used to rate pain related impairments for any condition that can be adequately rated on the basis of the body and organ impairment systems given in other chapters of the A.M.A., *Guides*.⁹ Accordingly, appellant has not established that she is entitled to more than the six percent award received for her right lower extremity.

CONCLUSION

The Board finds that appellant has not established that she sustained more than a 15 percent permanent impairment of the left lower extremity or more than a 6 percent impairment to her right lower extremity, for which she received a schedule award.

⁷ Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

⁸ See *Jack R. Smith*, 41 ECAB 691, 701 (1990).

⁹ See FECA Bulletin No. 01-05 (issued January 31, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 5, 2004 is affirmed as modified.

Issued: January 12, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member