

knee amputation of the right leg. Appellant returned to part-time, limited duty on September 5, 2001 and later returned to full-time limited duty.

In a report dated January 29, 2002, Dr. Elizabeth Polacheck, a physiatrist, stated that appellant's restrictions were permanent. In a report dated April 16, 2002, Dr. Polacheck stated that appellant had an amputation below the right knee that was performed as a result of a work-related injury and that he had reached maximum medical improvement on that date. She noted that he had progressive atrophy of the right lower extremity which affected the fit of his prosthesis. Dr. Polacheck further stated that, as appellant wears his prosthesis for longer periods, he has increased phantom pain and discoloration of the residual limb. Appellant requires crutches when he is not using his prosthesis and will likely require a wheelchair for longer distances. She stated that appellant is taking medication for phantom pain and for circulation. Dr. Polacheck stated his residual limb was 5.25 inches in length, had intact skin with good hair growth, and had normal right knee range of motion. Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* she determined that he had a 70 percent impairment of the right lower extremity.

On May 17, 2002 appellant filed a claim for a schedule award.

In a report dated June 17, 2002, Dr. David Garelick, an Office medical adviser and a Board-certified orthopedic surgeon, reviewed Dr. Polacheck's report and determined that appellant had a 70 percent right lower extremity impairment and a date of maximum medical improvement of January 29, 2002.

In a report dated December 13, 2002, Dr. Polacheck stated that based on her impairment evaluation on April 16, 2002 appellant had a total, 100 percent impairment of the right foot and 70 percent impairment of the right lower extremity which was amputated below the knee.

On January 2, 2003 appellant stated that phantom pain and atrophy "are still present," and that he had a 100 percent impairment of the right foot and a 70 percent impairment of the right leg.

On October 8, 2003 the Office granted appellant a 70 percent schedule award for permanent impairment of the right lower extremity. The date of maximum medical improvement was January 29, 2002, and the award ran for 201.6 weeks, from January 29, 2002 to December 10, 2005.

In a report dated October 17, 2003, Dr. James Bicos, an Office medical adviser and an orthopedic surgeon, reviewed appellant's record including Dr. Polacheck's December 13, 2002 report to determine if he was entitled to an additional impairment award for right toe amputation. She determined that appellant had no more than a 70 percent schedule award based on his right lower extremity impairment, stating that appellant was entitled to only one impairment for the right leg amputation that included the right foot by definition.

On November 5, 2003 appellant requested an oral hearing.

On March 29, 2004 a hearing was held and on July 2, 2004 the hearing representative issued a decision affirming the Office's October 8, 2003 decision.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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. The statute provides that, if a leg is amputated above the ankle, "compensation is the same as for the loss of the ... leg...."³ 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. Generally, the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

ANALYSIS

In this case, Dr. Polacheck, appellant's physiatrist, stated that he had a 100 percent loss of his right foot and a 70 percent impairment of the right lower extremity which had been amputated below the knee.

To the extent that appellant asserts entitlement to a schedule award to the toe or to the foot in addition to that granted for the leg, such an assertion is without merit. It is well settled that, when an impairment extends into an adjoining member, the award is made on the basis of the loss of use of the larger member.⁵

However, regarding appellant's permanent impairment to the leg, 5 U.S.C. § 8107(c)(16) provides that, "If, in the case of an arm or leg, the member is amputated above the wrist or ankle, compensation is the same as for loss of the arm or leg, respectively." The record establishes that appellant underwent an amputation of his right leg below the knee that was causally related to his employment. Therefore, as the statute supersedes the A.M.A., *Guides*, appellant is entitled to impairment equal to that of the loss of a leg.⁶ The Office's decision must therefore be set aside and the case record remanded for the Office to award appellant an additional 30 percent impairment, for a total of 100 percent impairment, of the right leg due to an amputation above the ankle.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ 5 U.S.C. § 8107(c).

⁴ *Willie C. Howard*, 55 ECAB ____ (Docket Nos. 04-342 & 04-464, issued May 27, 2004).

⁵ *Asline Johnson*, 42 ECAB 619, 620 (1991).

⁶ 5 U.S.C. § 8107(c)(2), (c)(16).

CONCLUSION

The Board finds that appellant has established an entitlement to a schedule award of 100 percent based on the work-related amputation of his lower extremity below the right knee.

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case record remanded for further development consistent with this decision.

Issued: June 23, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member