

Appellant also had a right knee surgery on May 17, 2005; however, the Office did not accept this as a work-related condition.

By decision dated April 6, 2004, the Office terminated appellant's compensation benefits effective that day on the basis that the weight of the medical opinion evidence rested with Dr. Prasanna L. Soni, a Board-certified orthopedic surgeon and an Office referral physician. Dr. Soni opined that appellant was medically capable of returning to her date-of-injury position of causal clerk without any physical restrictions based upon her work-related right ankle condition. The Office additionally noted that Dr. Robert M. Fumich, a Board-certified orthopedic surgeon and appellant's attending physician, failed to provide updated examination findings to support that any work restrictions due to residuals of her work-related ankle condition and there was no current medical evidence of record to refute the findings and opinion set forth by Dr. Soni.

On May 13, 2004 appellant claimed a schedule award. The most recent medical evidence incorporating physical examination findings is a February 4, 2004 report of Dr. Soni who noted that dorsiflexion of the ankle was 20 degrees, plantar flexion was 40 degrees, and inversion and eversion were normal. He opined that, although appellant had minimum active residuals of her accepted ankle condition, she had reached maximum medical improvement and could return to work as a causal clerk without restrictions.

On June 27, 2004 an Office medical adviser reviewed the medical record and opined that appellant reached maximum medical improvement on February 4, 2004. The Office medical adviser applied Dr. Soni's physical examination findings to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He opined that there was no ratable impairment for the right lower extremity. Under Table 17-11 page 537, the Office medical adviser found that a dorsiflexion of 20 degrees and a plantar flexion of 40 degrees represented no (zero) impairment. Under Table 17-12 page 537, the Office medical adviser found that a normal inversion/eversion represented no (zero) impairment.

By decision dated October 28, 2004, the Office denied appellant's schedule award claim, noting that the Office medical adviser had found that the medical evidence failed to establish a measurable permanent impairment due to her accepted right ankle conditions.

In a November 2, 2005 letter, appellant, through counsel, requested an oral hearing before an Office hearing representative, which was held on July 19, 2005. By decision dated September 28, 2005, the Office hearing representative affirmed the October 28, 2004 decision. The Office hearing representative found that, although the Office did not request Dr. Soni to examine appellant for schedule award purposes, her report was the only medical evidence of record which contained examination findings pertaining to the right lower extremity. The Office hearing representative noted that there was no medical evidence from any treating physician which established that appellant had impairment of her right lower extremity. The hearing representative held the record open but appellant did not submit any additional medical evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.²

Under section 8107 of the Act³ and section 10.404 of the implementing federal regulation,⁴ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, 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*⁵ has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁶

ANALYSIS -- ISSUE 1

The Office accepted that the conditions of right ankle sprain and right Achilles tendinitis and tendon tear as being work related and authorized several surgeries. Appellant contends that she sustained permanent impairment and is entitled to a schedule award for loss of use of her right ankle/lower extremity. The Board finds, however, that the weight of the medical opinion evidence does not establish that the accepted right ankle conditions have resulted in any permanent impairment.

Dr. Soni's February 4, 2004 report is the only medical report providing a current objective examination of appellant's right lower extremity, pursuant to a second opinion examination pertaining to whether she had any active residuals stemming from her accepted work-related conditions and surgeries and whether she was medically capable of performing the duties of her date-of-injury position. Dr. Soni was provided with the medical record together with a statement of accepted facts. She reviewed appellant's medical records, history of injury, and diagnostic studies. The findings on physical examination included range of motion measurements for the ankle and hindfoot. Although appellant had some active residuals from her work-related conditions, maximum medical improvement was reached and she was found capable of performing her date-of-injury position with no restrictions. The Board finds that the report of Dr. Soni is based on a complete and accurate factual and medical history and contains sufficient findings to rate impairment under the standards set forth in the A.M.A., *Guides*. There

¹ 5 U.S.C. §§ 8101-8193.

² *Gary J. Watling*, 52 ECAB 278 (2001).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

⁶ See *Joseph Lawrence, Jr.*, *supra* note 5; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989).

is no other medical report of record which provides a current medical examination or which provides findings that appellant has impairment of the right lower extremity causally related to her employment injury of May 1, 1999.

The Office's procedures note that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.⁷ In a June 27, 2004 report, the Office medical adviser compared the findings of Dr. Soni with the relevant provisions of the A.M.A., *Guides*. He found that there was no injury-related permanent impairment to the right lower extremity. Under Table 17-11 page 537, dorsiflexion (extension) of 20 degrees represents zero percent impairment and plantar flexion (plantar flexion capability) of 40 degrees is also zero percent impairment. Under Table 17-12 page 537, normal inversion and normal eversion are zero percent impairment. Not all medical conditions accepted by the Office result in permanent impairment to a schedule member. The medical evidence of record does not demonstrate that appellant's accepted right ankle condition caused or contributed to any permanent impairment of her right lower extremity.

CONCLUSION

The Board finds that appellant has not established entitlement to a schedule award as the medical evidence does not support permanent impairment to her right lower extremity caused by her accepted employment injury of May 1, 1999.⁸

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (August 2002).

⁸ This decision does not preclude appellant from submitting new medical evidence, if at some future point she believes that she has ratable permanent impairment, supporting the progression of an employment-related condition resulting in permanent impairment. See *Candace A. Karkoff*, 56 ECAB ____ (Docket No. 05-677, issued July 13, 2005); *Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 28, 2005 is affirmed.

Issued: April 6, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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