



she received a schedule award.<sup>2</sup> The facts and the history contained in the prior appeal are incorporated by reference. The facts and the history germane to the present issue have been reiterated and include appellant's accepted conditions of a left knee sprain with meniscus tear and surgical correction on May 9, 1989. The Office also accepted her claim for bilateral aggravation of varicose veins and residuals of her left knee meniscus tear.

By letter dated August 14, 2001, appellant's representative enclosed an impairment rating from Dr. Hugh Morris, a Board-certified orthopedic surgeon. In an August 9, 2001 report, he advised that she reached maximum medical improvement on June 7, 2001. Dr. Morris referred to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*) and opined that appellant had an impairment of 20 percent for both the right and left lower extremity or 8 percent to the body for each extremity. He opined that this would correlate to 15 percent to the body as a whole pursuant to the Combined Values Chart.

On August 31, 2001 appellant filed a claim for a schedule award.

On August 21, 2003 the Office provided an Office medical adviser with a copy of Dr. Morris' report and requested that he provide an opinion for schedule award purposes. On August 22, 2003 the Office medical adviser indicated that Dr. Morris did not provide rationale for his impairment rating under the A.M.A., *Guides* and he could not confirm or deny the assessment.

By letter dated August 29, 2003, the Office requested that Dr. Morris provide an impairment rating in accordance with the A.M.A., *Guides*.

By letters dated January 15 and 27, 2004, the Office referred appellant, together with a statement of accepted facts and copies of medical records, to Dr. Charles Thompson, Board-certified in surgery and vascular surgery, for a second opinion examination regarding her impairment associated with the accepted condition of aggravation of varicose veins, both legs, for schedule award purposes.

In a February 16, 2004 report, Dr. Thompson noted appellant's history of injury and treatment and utilized the A.M.A., *Guides*. He noted examining her and indicated that she was morbidly obese and used a walker. Dr. Thompson noted that her upper extremities were swollen and the lower extremities had numerous varicosities which were tender. He diagnosed severe venous insufficiency. Dr. Thompson explained that, while appellant had numerous complaints that corresponded to findings of varicose veins, there was mainly evidence of swelling and fatigue. He advised that the "pattern of pain, its inconsistency, its onset and the worsening contribution of pain in the joints in the legs did not necessarily correspond to a finding of varicose veins and point to other causes of severe leg pain." Dr. Thompson advised that appellant "probably had more problems from osteoarthritis, osteoporosis and severe obesity that might be causing her fatigability and inability to walk, rather than her varicose veins. In my opinion, the subjective complaints are too numerous and do not fit the profile of simple venous insufficiency and varicose veins." Dr. Thompson also noted that appellant had reached maximum medical improvement from her work-related injury. He advised that she "refused to

---

<sup>2</sup> The Board also found that appellant was not entitled to compensation for wage loss beginning June 19, 1990.

wear her compression stockings” and “has refused surgery for her varicose veins.” Dr. Thompson noted that appellant had a temporary aggravation which should have stopped when she retired in September 1990, as she was no longer engaging in long periods of walking and standing. Regarding whether she continued to have residuals of the employment-related injury, he opined that appellant’s morbid obesity, osteoarthritis and osteoporosis contributed to her inability to walk and her leg pain. Dr. Thompson indicated that appellant’s problems stemmed from her obesity and osteoarthritis and were less likely to involve the varicose veins. Dr. Thompson indicated that the pain that appellant was having did “not correlate to the severity of her venous insufficiency.” He did not recommend a venous stripping or venous procedure and explained that she was walking with a walker and was not “extremely mobile.” Dr. Thompson stated that appellant had a degree of residual aggravation of her superficial femoral veins, but opined that he did not believe that this was the cause of her impairment. He explained “that appellant’s other impairments are more likely to be the cause of her inability to walk and the severe pain in her legs, as well as her back and hips.”

By letters dated March 10 and May 26, 2004, appellant’s representative inquired about the status of the schedule award claim.

By letter dated July 1, 2004, the Office advised appellant’s representative that it was unable to process her claim for an additional schedule award as Dr. Morris never provided rationale for his opinion that she was entitled to an impairment of 20 percent for each lower extremity. Counsel was advised that appellant was not entitled to a schedule award as her conditions of osteoarthritis of the knees, severe osteoporosis and severe obesity caused her inability to walk and her severe pain in the legs, back and hips. The Office noted that Dr. Thompson did not provide an impairment rating because he did not find that appellant’s present medical conditions were related to her accepted condition.

By decision dated January 19, 2005, the Office denied appellant’s claim for a schedule award to the right lower extremity.

By letter dated February 10, 2005, appellant’s representative requested a hearing which was held on October 25, 2005. During the hearing, the Office hearing representative noted that counsel referenced a report from Dr. Morris dated April 27, 2005, which contained an impairment rating of 25 percent of the right lower extremity utilizing the A.M.A., *Guides*, Table 17-31. However, counsel did not provide the hearing representative with a copy of the report but indicated that he would send a copy to the hearing representative after the hearing.<sup>3</sup>

By letter dated May 11, 2005, appellant’s representative indicated that he was providing the Office with a copy of an April 26, 2005 impairment rating from Dr. Morris. However, the report did not accompany the letter.

By decision dated December 16, 2005, the Office hearing representative affirmed the Office’s January 19, 2005 decision. The Office hearing representative found that the evidence of record failed to establish that appellant sustained an impairment to the right lower extremity or

---

<sup>3</sup> The record does not contain a copy of this report.

increased impairment to the left lower extremity. The Office hearing representative noted that no further evidence was received from Dr. Morris.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> The Act's implementing regulation has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule award losses.<sup>7</sup>

### **ANALYSIS**

In support of her claim for a schedule award, appellant submitted the August 9, 2001 report of Dr. Morris, her treating physician. He advised that she had reached maximum medical improvement on June 7, 2001. Dr. Morris referred generally to the A.M.A., *Guides* and opined that appellant had an impairment of 20 percent for both the right and left lower extremity or 8 percent to the body for each extremity. He also indicated that this would correlate to an impairment of 15 percent to the body as a whole pursuant to the Combined Values Chart. However, despite being advised by the Office that his report was insufficient and failed to conform to the protocols within the A.M.A., *Guides*, he did not provide any further explanations to show how he arrived at his rating. Dr. Morris did not provide any explanation to show how he calculated the impairment ratings under the respective tables as set forth in the A.M.A., *Guides*.<sup>8</sup> He provided whole person ratings; however, the Act, does not provide a schedule award based on whole person impairments.<sup>9</sup> As such, Dr. Morris' impairment rating does not conform to the A.M.A., *Guides*. It is well established that, when the attending physician did not provide an estimate of impairment conforming with the protocols of the A.M.A., *Guides*, his opinion is of diminished probative value in establishing the degree of any permanent impairment.<sup>10</sup>

---

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Id.*

<sup>9</sup> See *Tania R. Keka*, 55 ECAB \_\_\_\_ (Docket No. 04-177, issued February 27, 2004); *James E. Mills*, 43 ECAB 215 (1991) (neither the Act, nor its implementing regulations provide for a schedule award for impairment to the body as a whole).

<sup>10</sup> See *John L. McClanic*, 48 ECAB 552 (1997); see also *Paul R. Evans*, 44 ECAB 646, 651 (1993).

The Office referred appellant for a second opinion examination with Dr. Thompson, Board-certified in surgery and vascular surgery, to determine whether there was an impairment rating that could be assessed and associated with the accepted condition of aggravation of varicose veins, both legs, for schedule award purposes. In a February 16, 2004 report, Dr. Thompson noted appellant's history and conducted a thorough examination. He noted that she was morbidly obese and diagnosed severe venous insufficiency. Dr. Thompson explained the pattern of pain that appellant exhibited did not correspond to a finding of varicose veins and pointed to other causes of severe leg pain. He advised that she had other problems, including her osteoarthritis, osteoporosis and severe obesity that might be causing her fatigue and inability to walk. Dr. Thompson opined that appellant's subjective complaints were "numerous" and did not fit the "profile of simple venous insufficiency and varicose veins." He stated that she had reached maximum medical improvement from her work-related injury. Dr. Thompson indicated that appellant had a temporary aggravation of her arthritis stopped when she retired in September 1990 as she was no longer engaging in long periods of walking and standing. He opined that her morbid obesity, osteoarthritis and osteoporosis contributed to her inability to walk and her leg pain and explained that the pain that appellant was having did "not correlate to the severity of her venous insufficiency. Dr. Thompson explained that her other impairments were more likely to be the cause of her inability to walk and the severe pain in her legs, back and hips. He did not rate appellant's impairment as the accepted conditions did not cause any impairment.

The Board finds that the medical evidence does not establish that appellant was entitled to a schedule award for an impairment of the right leg or for more than the 12 percent impairment of the left lower extremity for which she has already received an award.

On appeal, appellant's representative alleged that the Office hearing representative did not consider the conflict of medical opinion in appellant's claim. However, the Board notes that the record does not contain a conflict between a physician for appellant and a physician for the Office as contemplated under 5 U.S.C. § 8123(a). The Board has noted that a simple disagreement between two physicians does not, of itself, establish a conflict. To constitute a conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and of probative rationale.<sup>11</sup> As noted above, Dr. Morris' opinion is of diminished probative value as he did not provide an estimate of impairment conforming to the protocols of the A.M.A., *Guides*.

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she was entitled to a schedule award on the right lower extremity and for an award greater than the 12 percent of her left lower extremity for which she already received a schedule award.

---

<sup>11</sup> *John D. Jackson*, 55 ECAB \_\_\_\_ (Docket No. 03-2281, issued April 8, 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 16, 2005 is affirmed.

Issued: August 21, 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