

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

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D.B., Appellant

and

DEPARTMENT OF HOMELAND SECURITY,  
CUSTOMS & BORDER PROTECTION,  
Philadelphia, PA, Employer  
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**Docket No. 06-1455**  
**Issued: December 15, 2006**

*Appearances:*

*Jeffrey P. Zeelander, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 5, 2006 appellant, through her attorney, filed an appeal from a May 22, 2006 decision of the Office of Workers' Compensation Programs granting a schedule award for the right lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the schedule award decision.

**ISSUE**

The issue is whether appellant has more than a 15 percent impairment of her right lower extremity, for which she received a schedule award.

**FACTUAL HISTORY**

On April 28, 2004 appellant, a 46-year-old inspector, filed a traumatic injury claim alleging that she sustained a broken right heel on April 27, 2004 when she fell out of a container. The Office accepted the claim for right calcaneous fracture.

Appellant filed claims for a schedule award on June 20 and July 30, 2004. She submitted an impairment rating dated February 9, 2006 from Dr. David Weiss, an osteopath, who discussed her current complaints of right foot swelling and stiffness and right heel pain which waxed and waned. Dr. Weiss stated:

“Examination of the right ankle and foot reveals swelling over the lateral malleolus. There is tenderness over the base of the lateral malleolus. There is focal tenderness over the anterior talofibular ligament. [Appellant] is nontender over the common peroneal tendon. She is tender over the subtalar joint. There is tenderness over the posterolateral aspect of the calcaneus.”

The examination also revealed “Gastrocnemius circumference measures 44 cm [centimeters] on the right versus 47 cm on the left for a 3 cm deficit.” Citing to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001), Dr. Weiss concluded that appellant had a 3 percent impairment of the right lower extremity due to pain<sup>1</sup> and a 13 percent impairment for right calf atrophy<sup>2</sup> for a total impairment of 16 percent.

An Office medical adviser reviewed Dr. Weiss’ report and concurred that appellant had a three percent impairment of the right lower extremity due to pain pursuant to Figure 18-1 on page 574 of the A.M.A., *Guides*. He further found that appellant had a 13 percent impairment resulting from 3 cm of calf atrophy according to Table 17-6 on page 530. The Office medical adviser combined the impairments due to atrophy and impairment due to pain according to Figure 18-1 on page 574 to find a total impairment of 15 percent for the right lower extremity.

By decision dated May 22, 2006, the Office issued appellant a schedule award for a 15 percent impairment of the right lower extremity. The period of the award ran for 43.2 weeks from February 9 to December 8, 2006.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act<sup>3</sup> and its implementing regulation<sup>4</sup> 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

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<sup>1</sup> A.M.A., *Guides* 574, Table 18-1.

<sup>2</sup> *Id.* at 530, Table 17-6.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 5 U.S.C. § 8107.

implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup>

### ANALYSIS

The Office accepted that appellant sustained right calcaneus fracture on April 27, 2004. Appellant filed claims for a schedule award on June 20 and July 30, 2004 and submitted an impairment evaluation dated February 9, 2006 from Dr. Weiss in support of her request. Dr. Weiss found full range of motion of 0 to 140 degrees for both knees. He found tenderness of the lateral patellar facet of the left knee and tenderness over the medial and lateral patellar facets of the right knee. Dr. Weiss measured appellant's gastrocnemius circumference as 34 cm on the right and 33 cm on the left. He determined that appellant had a 3 percent impairment due to pain on the right side and a 13 percent impairment due to calf atrophy, for a total right lower extremity impairment of 16 percent.

An Office medical adviser applied the tables and pages of the A.M.A., *Guides* to Dr. Weiss findings. The Office medical adviser agreed with rating a 13 percent impairment due to 3 cm of calf atrophy. According to Table 17-6 on page 530 of the A.M.A., *Guides*, a 3+ centimeter difference in calf circumference represents a severe impairment with a 13 percent impairment of the lower extremity. As appellant had 3 cm of atrophy of the left calf, the Office medical adviser properly assigned her the impairment range of 13 percent. The Office medical adviser further concurred with Dr. Weiss' finding that appellant had a 3 percent impairment of the right lower extremity due to pain pursuant to Figure 18-1 on pages 574 of the A.M.A., *Guides* to find a total impairment rating of "15 percent." He indicated that the date of maximum medical improvement was February 9, 2006.

The Board notes that both Dr. Weiss and the Office medical adviser failed to explain the three percent impairment rating for pain under Chapter 18. Section 18.3b, pages 571 of the A.M.A., *Guides*, specifically states that examiners should not use Chapter 18 to rate pain-related impairments for any condition that can be adequately rated on the basis of the body and organ rating systems found in the other chapters. Neither Dr. Weiss nor the Office medical adviser addressed why appellant's pain could not be adequately assessed under the protocols of Chapter 17. Moreover, neither physician addressed the Cross Usage Chart at Table 17-2 which notes that atrophy and pain impairments may not be combined.<sup>7</sup> Dr. Weiss and the Office medical adviser properly applied the A.M.A., *Guides* in rating a 13 percent impairment of the right lower extremity under Chapter 17 for atrophy. The medical evidence establishes that appellant has a 13 percent impairment of the right lower extremity.

The Board finds that the weight of the medical evidence of record establishes that appellant has no more than a 13 percent impairment of the right lower extremity.

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<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> FECA Bulletin No. 01-05 (issued January 29, 2001); see *Thomas P. Lavin*, 57 ECAB \_\_\_\_ (Docket No. 05-1229, issued February 3, 2006); *Jesse Mendoza*, 54 ECAB 802 (2003).

<sup>7</sup> See, e.g., *Lorraine McGowan*, Docket No. 05-1308 (issued January 10, 2006).

**CONCLUSION**

The Board finds that appellant has no more than a 13 percent impairment of the right lower extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 22, 2006 is affirmed, as modified.

Issued: December 15, 2006  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board