

release with abrasion chondroplasty of the patella along with left mid-foot arthrodesis with proximal tibial autograft. He returned to light-duty work on August 2, 2004.

On January 19, 2005 appellant filed a claim for a schedule award for permanent impairment to his left lower extremity. Submitted with his claim was a January 7, 2005 attending physician's report from Dr. Ario Keyarash, a Board-certified orthopedic surgeon, who noted a 28 percent permanent impairment for the left foot.

In a letter dated March 8, 2005, the Office advised Dr. Keyarash that detailed measurements were required to accurately evaluate appellant's permanent impairment under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*).¹ The Office requested that Dr. Keyarash examine appellant and provide a detailed narrative report to determine the extent of permanent impairment of the left foot/lower extremity due to the employment injury. The Office also enclosed a form report entitled "The Foot and Toes," which provided guidelines from the A.M.A., *Guides* on the factors used to calculate a permanent impairment of the foot and toes.

In a January 7, 2005 report, Dr. Keyarash released appellant to full duty without restrictions. He noted that the left foot revealed a healed fusion with hardware in place with ankylosis in the neutral position. Based on the fifth edition of the A.M.A., *Guides*, Dr. Keyarash stated that ankylosis in the neutral position of the midfoot was 4 percent whole person impairment which equated to an 11 percent impairment of the lower extremity. On April 13, 2005 Dr. Keyarash completed the Office form report for the foot and toes and noted that appellant reached maximum medical improvement on January 7, 2005. He stated that appellant had a loss of function due to metatarsal joint ankylosis of the first and second tarsal and medial intercuneiform ankylosis. No pain or range of motion of affected toes were noted, but a fusion of the midfoot was noted as being an additional factor of disability.

The Office referred the medical record to an Office medical adviser. In an April 19, 2005 report, the Office medical adviser set forth his review of the medical record and opined that the date of maximum medical improvement was reached by January 7, 2005, approximately 13 months postsurgery. He found that appellant had a 10 percent impairment of the left lower extremity. The Office medical adviser noted that Chapter 17, page 542 of the A.M.A., *Guides* assessed 4 percent impairment for ankylosis in the neutral position for the subtalar part of the foot which was equivalent to a 10 percent impairment of the left lower extremity or leg.

By decision dated July 18, 2005, the Office awarded appellant 28.8 weeks of compensation for a 10 percent permanent impairment to his left lower extremity for the period January 7 to July 27, 2005.

¹ The A.M.A., *Guides* (5th ed. 2001).

LEGAL PRECEDENT

Under section 8107 of the Federal Employees' Compensation Act² and its implementing federal regulation,³ 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* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

ANALYSIS

In completing the form report on April 13, 2005, for the evaluation of appellant's left lower extremity impairment, Dr. Keyarash noted that appellant had no pain and opined that loss of function was due to ankylosis of particular joints along with a midfoot fusion. He noted no other basis for any further permanent impairment. In his January 7, 2005 report, Dr. Keyarash opined that appellant had 4 percent whole person impairment which equated to 11 percent impairment due to ankylosis in the neutral position.

An Office medical adviser reviewed Dr. Keyarash's reports and properly noted that the A.M.A., *Guides* provide for a 10 percent impairment of the lower extremity for ankylosis in the neutral position.⁵ This provision of the A.M.A., *Guides* states that "ankylosis impairment in the neutral position is 4 percent for the whole person [and] 10 percent for the lower extremity." Dr. Keyarash did not explain how he found 11 percent under the A.M.A., *Guides*. There is no other medical evidence of record establishing greater impairment than that found by the Office. The Board finds that the Office medical adviser properly concluded that appellant had a 10 percent permanent impairment of his left lower extremity.

On appeal, appellant also indicated that the rigorous nature of his job should be considered in determining his schedule award. The amount payable under a schedule award pursuant to section 8107 is defined by weeks of compensation for the listed member. Section 8107 does not take into account the effect the impairment may have on employment opportunities, sports, hobbies or other lifestyle activities.⁶ The provisions for schedule awards are separate from factors used to determine disability based on wage loss.⁷

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ See *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002); *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ A.M.A., *Guides* 542.

⁶ See *Ruben France*, 54 ECAB ____ (Docket No. 02-2194, issued March 21, 2003); *Timothy J. McGuire*, 34 ECAB 189 (1982).

⁷ See *Harry D. Butler*, 43 ECAB 859, 863-64 (1992).

CONCLUSION

The Board finds that appellant has no more than 10 percent impairment of his left lower extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 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