



20 percent pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) (the A.M.A., *Guides*). Dr. Weiss arrived at this rating by making the following findings: right shoulder resection arthroplasty, 10 percent, pursuant to Table 16-27 at page 506; range of motion deficit right shoulder, flexion, 1 percent, pursuant to Figure 16-40 at page 476; pain-related impairment, 3 percent, pursuant to Figure 18-1 at page 574, for a total 14 percent right upper extremity impairment; left grip strength deficit, 30 percent, pursuant to Table 16-34 at page 509; a 3 percent impairment for pain, pursuant to Figure 18-1 at page 574, for a total 33 percent left upper extremity impairment; a 5 percent impairment for 4/5 motor strength deficit, right hip flexors, pursuant to Table 17-8 at page 532; a 13 percent impairment for right calf atrophy, pursuant to Table 17-6 at page 530; and a 3 percent pain-related impairment pursuant to Figure 18-1 at page 574, for a total 20 percent right lower extremity impairment.

In a report dated June 5, 2003, Dr. Rekha Rao, Board-certified in psychiatry and neurology, stated findings on examination pertaining to various parts of appellant's right and left upper and lower extremities. He discussed the results of diagnostic tests performed on her right hand and right leg. However, Dr. Rao's report did not provide any findings regarding impairment due to appellant's work-related right foot contusion.

On March 3, 2004 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right lower extremity.

By letters dated March 26 and June 16, 2004, the Office advised appellant's attorney that Dr. Weiss' report pertained to anatomical area not associated with the claim for a schedule award based on the accepted right foot contusion. It noted that the medical evidence did not establish that appellant sustained any permanent impairment as a result of her work-related September 1999 right foot contusion. Additional evidence was requested.

By decision dated July 20, 2004, the Office denied appellant's claim for a schedule award. The Office stated that it had advised appellant that she needed to submit medical evidence establishing permanent impairment to her right foot, the part of her body injured in a work-related accident, but that such evidence was not submitted.

By letter dated July 22, 2004, appellant's representative requested an oral hearing, which was held on April 7, 2005. Appellant submitted a March 29, 2005 report containing x-ray results of her right foot.

By decision dated August 4, 2005, an Office hearing representative affirmed the July 20, 2004 Office decision.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

amount of compensation is paid in proportion to the percentage loss of use.<sup>2</sup> However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.<sup>3</sup>

### **ANALYSIS**

In this case, appellant's claim was accepted for a right foot contusion. Appellant submitted reports from Drs. Rao and Weiss, but these reports do not provide an impairment rating which pertained to the right foot. The Office advised appellant, in its March 26 and June 16, 2004 letters, that although Dr. Weiss' April 2, 2002 report contained numerous impairment ratings for her left upper extremity and right upper and lower extremities, these ratings did not pertain to the accepted right foot contusion. The report did not contain adequate rationale addressing how appellant had sustained permanent impairment as a result of her work-related September 1999 right foot contusion. For this reason, the Office properly found in its July 20, 2004 decision that she is not entitled to a schedule award. Appellant requested a hearing but did not submit any reports containing impairment ratings for the right foot, as was requested. The Board will affirm the August 4, 2005 decision of the Office hearing representative, as appellant has failed to provide probative medical evidence that she sustained permanent impairment of her right foot due to the accepted contusion.

### **CONCLUSION**

The Board finds that appellant has not sustained any permanent impairment to a scheduled member of her body causally related to her accepted right foot contusion, thereby entitling her to a schedule award under 5 U.S.C. § 8107.

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<sup>2</sup> 5 U.S.C. § 8107(c)(19).

<sup>3</sup> 20 C.F.R. § 10.404.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 4, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 15, 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