



dated October 27, 2000, the Board affirmed the Office's February 6, 1998 decision.<sup>1</sup> Appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right lower extremity. By decision dated July 12, 2002, the Office issued schedule awards for a four percent permanent impairment of the right leg and a twelve percent permanent for the left leg. Appellant's attorney requested reconsideration of the award for the right leg. In a decision dated July 16, 2003,<sup>2</sup> the Board set aside the Office's award for the right leg and remanded the case for consideration of whether appellant had any impairment of her right leg due to motor loss for a spinal based disorder, pursuant to Table 15-16 at page 424 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) the (A.M.A., *Guides*). The facts of this case are set forth in the Board's October 27, 2000 and July 16, 2003 decisions and are hereby incorporated by reference.

By letter dated January 22, 2004, the Office asked appellant's treating physician, Dr. Clay Irving, III, Board-certified in orthopedic surgery, to provide an impairment evaluation for the right lower extremity in accordance with the Board's instructions. The Office added a note to appellant in a postscript to the letter, advising her to assist in obtaining Dr. Irving's report by letter dated March 11, 2004. No response was forthcoming.

By decision dated April 1, 2004, the Office found that appellant had failed to meet her burden to provide a supplemental opinion from her treating physician to provide an impairment evaluation in accordance with the Board's instructions.

By letter dated April 8, 2004, appellant's attorney requested an oral hearing, which was held on December 14, 2004.

By decision dated March 2, 2005, an Office hearing representative set aside the April 1, 2004 decision and remanded the case for referral to a second opinion specialist.

In a report dated January 6, 2006, Dr. Paul A. Foddai, Board-certified in orthopedic surgery, determined that appellant had a 20 percent impairment of the right lower extremity based on loss of strength pursuant to Table 15-18 at page 424 of the A.M.A., *Guides*. He derived this rating based on a motor deficit of 4/5. Dr. Foddai also found that appellant had a unilateral spinal nerve root impairment at S1. He found, however, that appellant's abnormality was motor power only, with no sensory abnormality of the S1 nerve root.

In a report dated February 3, 2006, an Office medical adviser found that appellant had a five percent impairment of her right lower extremity based on the A.M.A., *Guides*. The Office medical adviser took Dr. Foddai's finding of a 20 percent maximum loss times a motor deficit of 4/5, which totaled a 5 percent right lower extremity impairment pursuant to Tables 15-16 and 15-18 at page 424. He found that there was a zero percent sensory impairment.

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<sup>1</sup> Docket No. 99-1827 (issued October 27, 2000).

<sup>2</sup> Docket No. 03-811 (issued July 16, 2003).

On February 10, 2006 the Office granted appellant a schedule award for a five percent permanent impairment of the right lower extremity for the period November 2 to 22, 2001 for a total of 2.88 weeks of compensation.

By letter dated February 16, 2006, appellant's attorney requested a hearing, which was held on June 7, 2006. Counsel contended that the Office medical adviser erred by failing to derive a rating for sensory deficit. Counsel contended that this created a conflict between the Office medical adviser and the opinions of previous physicians of record.

In a decision dated August 21, 2006, an Office hearing representative affirmed the February 10, 2006 Office decision and denied appellant's claim for an additional award.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees' Compensation Act<sup>3</sup> set 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 amount of compensation is paid in proportion to the percentage loss of use.<sup>4</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>5</sup>

### **ANALYSIS**

In its July 16, 2003 decision, the Board instructed the Office to determine whether appellant had any impairment in her right leg due to motor loss for a spinal based disorder pursuant to Table 15-16 at page 424. Appellant was referred to Dr. Foddai, who calculated a 20 percent impairment based on a 4/5 motor loss under Table 15-16. Using Table 15-16, the Office medical adviser found that appellant's 20 percent loss equated to a Grade 4 motor deficit. He then calculated her right-sided 5 percent lower extremity impairment by multiplying the maximum deficit for a Grade 4 impairment based on motor deficit under Table 15-16, 25, times 20 percent. The Office medical adviser concurred with Dr. Foddai's opinion of a zero percent sensory impairment; Dr. Foddai had stated that appellant's abnormality was motor power only, with no sensory abnormality of the S1 nerve root.<sup>6</sup>

There is no other probative medical evidence establishing that appellant sustained any additional permanent impairment. The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to the rate of appellant's right lower extremity impairment. His

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<sup>3</sup> 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

<sup>4</sup> 5 U.S.C. § 8107(c)(19).

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> The Office medical adviser cited Dr. Foddai's finding of 20 percent nerve root impairment at S1 pursuant to Table 15-18. However, Dr. Foddai did not apply Table 15-18 in calculating appellant's lower extremity impairment.

report constitutes the weight of medical opinion. Following the Office's decision, appellant's attorney requested a hearing but did not submit any additional medical evidence. The Board will affirm the Office's February 10 and August 21, 2006 decisions granting appellant a schedule award for a five percent permanent impairment to her right lower extremity.<sup>7</sup>

**CONCLUSION**

The Board finds that appellant has no more than a five percent permanent impairment to her right lower extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 21 and February 10, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: July 13, 2007  
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

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<sup>7</sup> On appeal, appellant's attorney contends that the Office further erred in failing to grant an additional impairment for the left lower extremity. However, in its July 16, 2003 decision, the Board remanded the case for the Office to consider a greater impairment award for the right lower extremity only. Appellant's attorney has not raised this issue or filed a claim for the left lower extremity since the July 2003 decision. The Board therefore rejects counsel's argument.