

FACTUAL HISTORY

Appellant, a 59-year-old former clerk, was injured at work on August 23, 1998 in an incident involving an approaching forklift. The Office accepted that he sustained a fracture of the left great toe.¹ On January 23, 2004 appellant filed a claim for a schedule award.

In a report dated February 2, 2004, Dr. H. Bruce Hamilton, a Board-certified neurosurgeon, indicated that appellant had a 20 percent impairment, which was based on a combination of medical problems, including cervical and lumbar conditions, carpal tunnel syndrome, peroneal palsy and posterior tibial palsy. The record also includes an August 19, 2002 report from Dr. Richard E. Scott Jr., a Board-certified physiatrist, who diagnosed cervicalgia, low back pain, bilateral carpal tunnel syndrome, high blood pressure and left peroneal palsy. Dr. Scott found 20 percent whole person impairment involving the cervical and lumbar spine and the upper and lower extremities. Only 6 percent of the overall 20 percent impairment was attributable to lower extremity muscle weakness, which included loss of strength in dorsiflexion (5 percent whole person) and extension of the great toe (1 percent whole person). On January 25, 2005 the district medical adviser reviewed the case record and found that appellant had 14 percent impairment of the left lower extremity due to muscle weakness involving left ankle dorsiflexion and left great toe extension. He commented that peroneal neuropathy was not an accepted condition. In a decision dated January 28, 2005, the Office denied appellant's claim for a schedule award.

Appellant requested an oral hearing, which was held on June 1, 2006. At the hearing, appellant submitted a May 31, 2006 report from Dr. Hamilton, who reiterated his earlier finding of 20 percent impairment due to a combination of conditions involving the cervical and lumbar spine, peroneal and tibial palsy and carpal tunnel syndrome. The hearing representative affirmed the previous denial of the schedule award by decision dated August 17, 2006.

On September 7, 2006 appellant requested reconsideration through his congressional representative's office. The Office also received a May 24, 2005 report from Dr. Hamilton who again reiterated his prior finding of 20 percent impairment. Based on the newly submitted evidence, the Office reviewed the merits of the schedule award claim, but denied modification in a decision dated December 7, 2006.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions

¹ Appellant has attempted on numerous occasions to have his August 23, 1998 traumatic injury claim expanded to include various other conditions, including carpal tunnel syndrome, mental stress, hearing loss, sexual dysfunction, cervical and lumbar disc disease and radiculopathy, bilateral leg condition with peripheral neuropathy and left foot drop with peripheral neuropathy. Currently, the claim is accepted only for left great toe fracture occurring on August 23, 1998. Appellant has filed six prior appeals with the Board, resulting in three separate decisions. Docket Nos. 99-1892, 99-2382, 00-120 (July 16, 2001); Docket No. 02-1976 (January 23, 2003); Docket Nos. 01-1372, 01-1607 (February 6, 2003). A detailed procedural history of the claim is set forth in the Board's prior decisions which are incorporated herein.

and organs of the body.² 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 under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁴

ANALYSIS

The Office medical adviser calculated a 14 percent left lower extremity impairment due to muscle weakness involving the left ankle and left great toe. This impairment, however, was attributed to left peroneal palsy; a condition which had not been accepted by the Office as arising from the August 23, 1998 employment injury. Appellant must demonstrate more than just the mere existence of a permanent impairment. The impairment must be causally related to the August 23, 1998 employment injury.⁵ The ratings provided by Dr. Hamilton and Dr. Scott do not demonstrate a left lower extremity permanent impairment attributable to the August 23, 1998 employment injury, which was accepted for a fractured left great toe. The Board finds that the Office properly denied appellant's claim for a schedule award.⁶

CONCLUSION

Appellant has not demonstrated that he has a left lower extremity permanent impairment attributable to his accepted employment injury.

² For a total loss of use, of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2) (2000).

³ 20 C.F.R. § 10.404 (2006).

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁵ *Edward W. Spohr*, 54 ECAB 806, 810 (2003).

⁶ On appeal, appellant requested that his claim be expanded. However, the Board's jurisdiction is limited to review of the December 7, 2006 decision. The Board cannot expand appellant's claim.

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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