

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

H.P., Appellant

and

**DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, GA, Employer**

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**Docket No. 07-715
Issued: June 26, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 22, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 12, 2006 regarding a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to an increased schedule award pursuant to 5 U.S.C. § 8107.

FACTUAL HISTORY

Appellant filed a traumatic injury claim (Form CA-1) for an ankle injury occurring on January 26, 1999. The accepted conditions in this case are: fracture of cuboid joint of the right foot, fracture of the left metatarsal, mechanical complication of internal orthopedic device, left foot extosis and left calcaneal spur. Appellant underwent right foot surgery on February 26, 2001.

In a report dated February 5, 2002, Dr. James DeOrio, an orthopedic surgeon, provided range of motion for the right ankle. An Office medical adviser reviewed the medical evidence and opined that appellant had a 30 percent right lower extremity permanent impairment with February 5, 2002 as the date of maximum medical improvement.

By decision dated June 19, 2002, the Office issued a schedule award for a 30 percent impairment to the right foot. The period of the award was 61.5 weeks commencing February 5, 2002.

Appellant underwent left foot surgery on September 26, 2002. In a report dated May 16, 2003, Dr. Leland McCluskey, an orthopedic surgeon, opined that appellant had a 20 percent left leg permanent impairment. An Office medical adviser reviewed the evidence and in a July 3, 2003 report he concurred that appellant had a 20 percent left leg permanent impairment. The date of maximum medical improvement was reported as May 16, 2003.

By decision dated August 19, 2003, the Office issued a schedule award for a 20 percent left leg permanent impairment. The period of the award was 57.6 weeks commencing July 14, 2003.

Dr. McCluskey performed bilateral foot surgery on October 18, 2005. He described the procedure as left foot exostectomy of the cuboids and hardware removal in the right heel. In a report dated February 16, 2006, Dr. McCluskey indicated that appellant had restricted motion from the fusions in the subtalar joints on both sides. He did not provide specific range of motion results. Dr. McCluskey opined that, based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a 20 percent left leg impairment and a 15 percent right leg impairment. He did not identify specific tables or explain how the percentages were determined.

In a report dated December 8, 2006, an Office medical adviser stated that appellant had surgery with no complications. He opined that appellant was not entitled to an additional impairment as a result of the October 18, 2005 surgery.

By decision dated December 12, 2006, the Office determined that appellant was not entitled to an increased schedule award. The Office found that the medical evidence did not support an increase in the impairment previously compensated.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use, of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.²

ANALYSIS

In the present case, appellant received a schedule award on June 19, 2002 for 61.5 weeks of compensation, representing a 30 percent impairment of the right foot.³ On August 19, 2003 he received 57.6 weeks of compensation for a 20 percent left leg permanent impairment. The issue is whether the evidence is sufficient to establish that appellant now has an increased impairment.

The record indicated that appellant underwent bilateral foot surgery on October 18, 2005. In his February 16, 2006 report, however, Dr. McCluskey did not provide a rationalized medical opinion as to the degree of permanent impairment. He stated that appellant had 20 percent impairment in his left leg and 15 percent in the right leg, without providing any medical rationale. Dr. McCluskey did not identify any tables or figures in the A.M.A., *Guides* to explain how the percentages were calculated.⁴ In addition, an Office medical adviser opined in a December 8, 2006 report that appellant did not have any additional impairment.

Based on the probative evidence of record, appellant did not establish a greater entitlement to compensation for impairment to the left leg or right leg than previously awarded on June 19, 2002 and August 19, 2003. Accordingly, the Board finds that the Office properly determined that appellant was not entitled to an additional schedule award.

CONCLUSION

Appellant did not establish entitlement to an additional schedule award in this case.

² A. *George Lampo*, 45 ECAB 441 (1994).

³ 61.5 weeks corresponds to approximately a 21.3 percent right leg impairment. See 5 U.S.C. § 8107, which provides 288 weeks of compensation for complete loss of use, of the leg.

⁴ The Board notes that the stated impairments do not represent a greater impairment than previously awarded.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 12, 2006 is affirmed.

Issued: June 26, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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