



On July 27, 2005 appellant filed a claim for a schedule award. By letter dated February 8, 2006, the Office requested that she provide a copy of the letter to her physician, for determination of the extent of any permanent impairment to her lower extremities pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001).

On April 14, 2006 Dr. Terrence M. Graham, a podiatrist, diagnosed bilateral tarsal tunnel syndrome which has not been controlled by orthotics and splints or responsive to surgical intervention. He indicated that appellant reached maximum medical improvement on January 4, 2004 and continued to have pain complaints and foot instability. A physical examination revealed “positive Tinel’s and Valleix’s overlaying these nerves in the tarsal tunnel syndrome,” no atrophy or obvious contraction of any leg muscles and “significant hyperpronation of the subtalar joint with instability of the rear foot and forefoot secondary to hyperpronation.” Dr. Graham related that appellant had “specific findings involving the right tibial nerve and right lateral plantar nerve.” He stated that appellant had moderate to severe pain which worsens with increased weight bearing. In an attached impairment rating form, Dr. Graham identified the right tibial and lateral plantar nerves as the nerve roots affected.

On August 3, 2006 the Office medical adviser reviewed the medical record. The Office medical adviser noted that no range of motion or muscle strength testing were documented by Dr. Graham. Appellant complained of heel and medial-sided ankle pain which worsened with prolonged standing and strenuous activity. The Office medical adviser reviewed Dr. Graham’s findings and determined that appellant had a one percent impairment due to Grade 4 pain in the right medial plantar nerve according to Tables 16-10 and 16-15 at pages 482 and 492, respectively.

### **LEGAL PRECEDENT**

The schedule award provision of the Federal Employees’ Compensation Act<sup>1</sup> and its implementing federal regulation,<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the A.M.A., *Guides* (5<sup>th</sup> ed. 2001) as the uniform standard applicable to all claimants.<sup>3</sup> Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404.

<sup>3</sup> 20 C.F.R. § 10.404(a).

<sup>4</sup> *Id.*; see *Thomas P. Lavin*, 57 ECAB \_\_\_\_ (Docket No. 05-1229, issued February 3, 2006); *Jesse Mendoza*, 54 ECAB 802 (2003).

## ANALYSIS

The Office accepted that appellant sustained bilateral tarsal tunnel syndrome. Appellant filed a claim for a schedule award on July 27, 2005. At the request of the Office, her attending physician, Dr. Graham, evaluated her to determine the extent of her permanent impairment of the lower extremities on April 14, 2006. He reported “positive Tinel’s and Valleix’s overlaying these nerves in the tarsal tunnel syndrome,” no atrophy or obvious contraction of any leg muscles and “significant hyperpronation of the subtalar joint with instability of the rear foot and forefoot secondary to hyperpronation.” Dr. Graham related that appellant had findings involving the right tibial nerve and right lateral plantar nerve. He stated that appellant had moderate to severe pain which worsens when there is increased weight bearing. However, Dr. Graham did not apply the tables of the A.M.A., *Guides* to his findings or provide a specific impairment determination.

The Office medical adviser reviewed Dr. Graham’s findings of right medial ankle and heel pain which worsens with prolonged standing and strenuous activity and concluded that appellant had a one percent impairment due to pain according to Tables 16-10 and 16-15 at pages 482 and 492, respectively. Table 16-15 is used to determine sensory or motor impairments of the major upper extremity peripheral nerves. In order to determine impairments due to nerve deficits of the lower extremity the Office medical adviser should have used Table 17-37. To derive impairment due to partial sensory loss for the medial plantar nerve, the percentage noted in Table 17-37 is multiplied by the severity of the sensory deficit, as classified in Table 16-10, page 482.<sup>5</sup> While the Office medical adviser reported a Grade 4 deficit under Table 16-10, he did not state which range he was using. The problem here is that a Grade 4 sensory deficit can range from 1 to 25 percent of the affected nerve and the A.M.A., *Guides* provides that the examiner must use his clinical judgment to estimate the appropriate percentage within this range.<sup>6</sup> The Office medical adviser did not adequately explain how he derived his impairment rating within the range of values shown in Table 16-10. As noted, he also used Table 16-15, which is not the correct table to use when determining the impairment rating for sensory loss for the medial plantar nerve. As such, the impairment rating made by the Office medical adviser is of diminished probative value.

The Board will set aside the Office’s October 6, 2006 schedule award decision and remand the case for further development. After such further development of the medical evidence as may be necessary, the Office shall issue an appropriate final decision on appellant’s entitlement to a schedule award.

## CONCLUSION

The Board finds that this case is not in posture for decision.

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<sup>5</sup> *Mark A. Holloway*, 55 ECAB 321 (2004).

<sup>6</sup> *James E. Earle*, 51 ECAB 567 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 6, 2006 is set aside and the case is remanded for further proceedings consistent with the above opinion.

Issued: May 21, 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