



sprain with tenosynovitis, history of osteochondral defect and dorsal talar loose body, with a left ankle synovectomy on September 5, 2006. Dr. Perlman noted that appellant had discomfort on standing and walking and stated that his condition was permanent and stationary. For range of motion in the left ankle, he reported 0 degrees dorsiflexion, 30 degrees plantar flexion, 10 degrees inversion and 30 degrees eversion. Dr. Perlman reported a one centimeter (cm) atrophy in the left calf. With respect to permanent impairment as a result of loss of range of motion, he identified Table 17-11 and 17-12 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Dr. Perlman also cited Table 17-6 for calf atrophy and opined that appellant had a five percent whole person impairment.

The Office referred appellant, medical records and a statement of accepted facts to Dr. Thomas J. Sabourin, an orthopedic surgeon, for a second opinion evaluation. In a report dated July 12, 2007, Dr. Sabourin provided a history and results on examination. As to left ankle range of motion, he reported 13 degrees dorsiflexion, 30 degrees plantar flexion, 30 degrees inversion and 20 degrees eversion. Dr. Sabourin reported a left calf circumference of one cm less than the right. He reported that appellant had a dull pain with standing and bending and in an accompanying form, Dr. Sabourin noted that appellant had ankle pain with prolonged activity.

An Office medical adviser reviewed the evidence in a July 29, 2007 report. The medical adviser opined the dull pain with standing and bending would result in a one percent leg impairment, based on a grade of 25 percent of the maximum 5 percent of the sural nerve, citing Table 16-10. The medical adviser found the range of motion results from Dr. Sabourin would not result in any impairment under Table 17-11. He concluded appellant had a one percent left leg impairment and the date of maximum medical improvement was July 10, 2007, approximately 10 months following the surgical procedure.

By decision dated August 20, 2007, the Office issued a schedule award for a one percent left leg impairment. The period of the award was 2.88 weeks commencing July 10, 2007.

### **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.<sup>1</sup> 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 justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>2</sup>

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<sup>1</sup> 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).

<sup>2</sup> A. George Lampo, 45 ECAB 441 (1994).

## ANALYSIS

The Office issued a schedule award based on the July 29, 2007 report of the Office medical adviser, who relied on the July 12, 2007 report of the second opinion physician. The Board finds that the attending physician, Dr. Perlman, as well as the second opinion physician Dr. Sabourin, provided probative medical reports with a detailed description of the impairment.

Based on the range of motion results from Dr. Perlman, under Table 17-11 of the A.M.A., *Guides* appellant would have a seven percent leg impairment for zero degrees dorsiflexion.<sup>3</sup> In addition, 10 degrees on inversion results in a two percent leg impairment under Table 17-12. A one cm calf muscle atrophy is a three percent leg impairment under Table 17-6.<sup>4</sup>

The range of motion results provided by Dr. Sabourin do not result in a impairment under Tables 17-11 or 17-12. The medical adviser reviewed Dr. Sabourin's report and found an impairment based on pain in the sural nerve. He applied Table 17-37, which provides a maximum five percent leg impairment due to dysesthesia in the sural nerve and graded the impairment at 25 percent of the maximum.<sup>5</sup> Although Dr. Sabourin found that appellant's left calf circumference was one cm smaller than the right, as did Dr. Perlman, the medical adviser did not discuss whether a muscle atrophy impairment under Table 17-6 was appropriate.

Since Dr. Perlman and Dr. Sabourin provided probative medical reports describing a permanent impairment that results in different impairment ratings under the A.M.A., *Guides*, the Board finds that there is a conflict in the medical evidence under the Act. Section 8123(a) provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination. The case will be remanded for referral to a referee physician to properly resolve the conflict. The referee physician should provide a detailed description of any permanent impairment and a rationalized opinion as to the degree of the impairment under the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision.

## CONCLUSION

The case will be remanded to the Office to resolve a conflict in the medical evidence pursuant to 5 U.S.C. § 8123(a).

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<sup>3</sup> A.M.A., *Guides* 537, Table 17-11. While Dr. Perlman referred to a whole person impairment, the table also provides lower extremity impairment ratings, which are appropriate under the Act as a scheduled member of the body.

<sup>4</sup> *Id.* at 537, Table 17-12 and 530, Table 17-6. However, Table 17-12, the Cross Usage Chart, indicates that range of motion loss may not be combined with impairment due to atrophy. Range of motion impairment maybe combined with peripheral nerve sensory lose. *Id.* at 526.

<sup>5</sup> *Id.* at 552, Table 17-37.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision Office of Workers' Compensation Programs dated August 20, 2007 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: February 5, 2008  
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