



the 3<sup>rd</sup> and 4<sup>th</sup> metatarsals and a hammer digit arthroplasty, proximal interphalangeal joint, of the 2<sup>nd</sup> toe of the right foot.

On June 15, 2006 appellant filed a claim for a schedule award. In a June 12, 2007 report, Dr. Emmanuel E. Jacob, a Board-certified physiatrist, reviewed appellant's medical history, activities of daily living and provided findings on physical examination. He noted that appellant continued to experience pain in both feet with dyesthesia. Dr. Jacob discussed appellant's impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (fifth edition). He rated loss of range of motion under Table 17-14, page 537, as two percent lower extremity (mild) impairment of the metatarsophalangeal (MP) and interphalangeal (IP) joints of both the right and left great toes.<sup>1</sup> He found that the MP joint dorsiflexion of eight degrees in the right and left lesser toes represented two percent impairment to each extremity. Dr. Jacob rated impairment due to dyesthesia in both feet under Table 17-37, page 552, stating that the nerve deficit represented five percent impairment to each lower extremity.<sup>2</sup> In rating loss of strength, he referred generally to Table 16-13, page 489, and Table 16-11, page 484, to find that dorsiflexion of 4/5 was "equivalent to 20 percent motor deficit and 35 percent impairment = 7 percent impairment of the lower extremity." Dr. Jacob added each of the impairment values to find a total 20 percent impairment to the lower extremities.

On September 15, 2007 an Office medical adviser reviewed the medical evidence and noted that Dr. Jacob's had not properly applied the A.M.A., *Guides*. He noted that the impairment rating for loss of strength had been made with reference to Chapter 16 and tables evaluating the C4 nerve root, which would not be applicable to appellant's lower extremity impairment. Therefore the seven percent impairment rating could not be accepted. The Office medical adviser recommended that appellant's schedule award be based on loss of range of motion of the toes. He agreed with the ratings provided by Dr. Jacobs, noting two percent lower extremity impairment at both great toes for loss of MP flexion and IP flexion. The impairment to the right and left lesser toes for MP motion of eight degrees dorsiflexion was two percent lower extremity impairment. As to the dyesthesia rating of five percent impairment to both feet, the Office medical adviser stated that Dr. Jacob had not properly rated impairment. He noted that appellant's surgery was for excision of a Morton's neuroma of the right foot, which was the third branch of the medial plantar nerve. Dr. Jacob noted that the maximum sensory impairment allowed for the medial plantar nerve was five percent.<sup>3</sup> However, he did not complete the calculation for sensory loss with reference to the tables that grade sensory deficit. The Office medical adviser noted that Table 16-10, page 482, classified 25 percent sensory deficit as a Grade 4 loss.<sup>4</sup> Allowing a 25 percent deficit of the maximum 5 percent impairment for sensory loss of the medial plantar nerve resulted in one percent impairment for pain. The Office medical

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<sup>1</sup> Dr. Jacob identified 20 degrees dorsiflexion of the MP joint in both great toes and plantar flexion of 12 degrees in the right great toe IP joint and 15 degrees in the left great toe IP joint.

<sup>2</sup> Dr. Jacob did not identify the specific nerve root causing impairment under Table 17-37.

<sup>3</sup> Table 17-37, page 552.

<sup>4</sup> The A.M.A., *Guides* 550, provide that in rating sensory loss under Table 17-37, partial loss should be rated as in the upper extremity as noted at Tables 16-10 and 16-11.

adviser rated the total right lower extremity impairment as five percent by adding the range of motion loss (2 + 2 =4) and combining the one percent sensory impairment. The total left lower extremity impairment was four percent, based on adding the loss of range of motion to the toes.

By decision dated November 28, 2007, the Office issued a schedule award for five percent impairment of the right lower extremity and four percent impairment of the left lower extremity.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>5</sup> sets for the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>6</sup> 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>7</sup> The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.<sup>8</sup>

### **ANALYSIS**

Appellant's claim was accepted by the Office for hallux valgus deformities of both feet and hammertoes. He underwent surgery of the right foot consisting of an excision of a Morton's neuroma. In rating appellant's impairment as 20 percent of the lower extremities, the Board notes that Dr. Jacob did not properly apply the A.M.A., *Guides*. As noted by the Office medical adviser, he rated impairment for loss of strength with reference to tables appearing in Chapter 16, which is relevant to rating upper extremity impairment.<sup>9</sup> Dr. Jacob, therefore, did not properly identify the corresponding lower extremity nerve which would cause loss of strength to either leg. Although Dr. Jacob properly referred to Table 17-14 in rating loss of range of motion to the great toes and lesser toes of both feet, he miscalculated the total loss as eight percent to each leg. Under Table 17-14, the impairment allowed for great toe MP and IP impairment, as described, is a total of two percent for mild impairment with another two percent allowed for the MP loss of the lesser toes. This results in a total of four percent impairment for loss of range of motion to each lower extremity, as noted by the Office medical adviser. Therefore, Dr. Jacobs erroneously doubled the extent of loss of range of motion impairment in making his rating. His rating of sensory loss, or pain, is also not in conformance with the A.M.A., *Guides*. Dr. Jacobs noted only that he allowed five percent impairment for dyesthesia to both lower extremities under Table 17-37. However, he did not identify the nerve root causing impairment and he did not

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> Dr. Jacob's did not address Table 17-37, which provides a protocol for evaluating motor loss to the lower extremities.

grade the extent of the nerve deficit with reference to Table 16-10 as directed at page 550. This error was also noted by the Office medical adviser. For these reasons, the impairment rating provided by Dr. Jacob's is of diminished probative value.

The Board finds that the weight of medical opinion is represented by the report of the Office medical adviser who reviewed the report of Dr. Jacobs and provided explanation for determining that appellant had five percent impairment of his right lower extremity due to sensory loss of one percent and loss of range of motion of four percent. As to the left leg, the Office medical adviser found four percent impairment based on loss of range of motion. There is no other medical evidence establishing greater impairment that conforms to the A.M.A., *Guides*.

**CONCLUSION**

The Board finds that appellant has five percent impairment to his right leg and four percent impairment to his left leg, for which he received schedule awards.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 28, 2007 be affirmed.

Issued: June 12, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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