

In an October 9, 2007 report, Dr. Keith B. Kashuk, a podiatrist, concluded that appellant had less than a two percent permanent impairment of her left lower extremity. A physical examination revealed no tenderness on palpation to the sinus tarsi area or subtalar joint. Dr. Kashuk also reported mild tenderness on palpation with no effusion of the calcaneocuboid joint.

On October 12, 2007 appellant filed a claim for a schedule award.

In response to an Office February 28, 2008 letter for schedule award information, Dr. Kashuk noted that appellant reached maximum medical improvement on October 9, 2007 and that she had less than a two percent permanent impairment of the left lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.¹

In a March 25, 2008 report, the Office medical adviser determined that appellant had a zero percent impairment to her left lower extremity. In support of this conclusion, the Office medical adviser noted the objective evidence was negative and that Dr. Kashuk's rating of "less than [two] percent does not follow the [A.M.A.,] *Guides*."

By decision dated March 26, 2008, the Office denied appellant's claim for a schedule award, on the grounds that there are no objective findings of a permanent impairment.

LEGAL PRECEDENT

Pursuant to section 8107 of the Federal Employees' Compensation Act² and section 10.404 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*⁴ has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁵

Before the A.M.A., *Guides* can be utilized a description of appellant's impairment must be obtained from her physician. The description must be in sufficient detail so that the claims

¹ Hereinafter A.M.A., *Guides*.

² 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.404.

⁴ A.M.A., *Guides* (5th ed. 2001).

⁵ See 20 C.F.R. § 10.404; *D.J.*, 59 ECAB ____ (Docket No. 08-725, issued July 9, 2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁶

ANALYSIS

The Board finds that the Office properly denied appellant's schedule award claim, as she did not present sufficient medical evidence to provide a basis for permanent impairment causally related to the accepted left ankle contusion.

In support of her claim for a schedule award, appellant submitted an October 9, 2007 report by Dr. Kashuk who concluded that appellant had less than a two percent permanent impairment of her left lower extremity rating. Dr. Kashuk provided no explanation as to how he arrived at appellant's impairment. In response to the Office's request for clarification, he stated that appellant reached maximum medical improvement on October 9, 2007 and had less than a two percent permanent impairment of the left lower extremity based on the A.M.A., *Guides*. However, Dr. Kashuk did not provide an explanation as to how he arrived at his rating in either report, *i.e.*, he did not identify the table or tables utilized or explain why they were otherwise inapplicable. Board precedent is well settled that when an attending physician's report gives an estimate of impairment but does not address how the estimate is based upon the A.M.A., *Guides*, the Office is correct to follow the advice of its medical adviser or consultant where he or she has properly applied the A.M.A., *Guides*.⁷

The Office medical adviser, based upon a review of Dr. Kashuk's reports and the evidence of record, determined that appellant had a zero percent impairment to her left lower extremity. He explained that the objective evidence of record was negative and that Dr. Kashuk's rating failed to comport with the A.M.A., *Guides* as he determined that appellant had less than two percent permanent impairment of the left lower extremity, which is inconsistent with the protocols of the A.M.A., *Guides*. The Board finds that the Office medical adviser properly applied the A.M.A., *Guides* to the medical evidence of record and that there is no other medical evidence of record supporting a permanent impairment to the left lower extremity pursuant to the A.M.A., *Guides*.

As noted above, the Office evaluates schedule award claims pursuant to the standards set forth in the A.M.A., *Guides*. Appellant has the burden of proof to submit medical evidence supporting that she has impairment of a scheduled member of the body.⁸ As such evidence has not been submitted, she has not established entitlement to a schedule award for her left ankle contusion.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for a schedule award.

⁶ *D.N.*, 59 ECAB ___ (Docket No. 07-1940, issued June 17, 2008); *Vanessa Young*, 55 ECAB 575 (2004).

⁷ *J.Q.*, 59 ECAB ___ (Docket No. 06-2152, issued March 5, 2008); *Laura Heyen*, 57 ECAB 435 (2006).

⁸ See *Annette M. Dent*, 44 ECAB 403 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 26, 2008 is affirmed.

Issued: February 4, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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