

October 16, 2003 and entered her on the periodic rolls on November 21, 2003. Appellant returned to limited duty four hours a day on July 5, 2004. On March 4, 2005 she underwent surgical removal of the hardware in her right heel. The Office authorized compensation benefits for the resulting recurrence of disability. Appellant returned to full duty on November 7, 2005.

In a report dated October 24, 2006, Dr. Robert S. Goldstein, a Board-certified orthopedic surgeon, examined appellant and noted her history of injury as well as her complaint of pain in both ankles. He noted that appellant had a mild limp on the right with 0 degrees of dorsiflexion, 40 degrees of volarflexion, and 10 degrees of inversion and eversion. On the left appellant exhibited 20 degrees of dorsiflexion, 50 degrees of volarflexion, 40 degrees of inversion and 10 degrees of eversion. Dr. Goldstein stated that appellant had numbness of the surgical scar on her right ankle and tenderness over the surgical scar on her left ankle. He found appellant's right foot was pronated due to the injury with a mild valgus deformity in the heel. Dr. Goldstein stated that appellant had no subtalar motion in the right heel and that her right calf measured 31 centimeters while the left calf measured 33 centimeters. He found that appellant had reached maximum medical improvement and that she had 50 percent impairment of her right lower extremity and 17 percent impairment of the left lower extremity. Appellant requested a schedule award on February 12, 2007.

The Office medical adviser reviewed Dr. Goldstein's report on July 3, 2007, noting that additional findings on examination were required. He found that based on the range of motion figures provided appellant had 11 percent impairment of the right lower extremity and 2 percent impairment of the left lower extremity.

The Office requested a supplemental report from Dr. Goldstein on July 25, 2007. In a letter dated September 26, 2007, it found a conflict of medical opinion between Dr. Goldstein and the Office medical adviser and referred appellant to Dr. Marc Berezin, a Board-certified orthopedic surgeon. In a report dated October 26, 2007, Dr. Berezin found that appellant had a normal gait with decreased sensation over her incision on the right and swelling in her heel. He noted that appellant's right lower extremity demonstrated dorsiflexion of 20 degrees, plantar flexion of 40 degrees, inversion of 10 degrees and eversion of 5 degrees. In regard to appellant's left lower extremity, Dr. Berezin found decreased sensation over the incision, dorsiflexion of 20 degrees, plantar flexion of 40 degrees, inversion of 30 degrees and eversion of 20 degrees. He concluded that appellant had three percent impairment of the right lower extremity due to loss of range of motion on and decreased sensation consistent with lateral plantar nerve deficit of five percent for eight percent impairment of the right lower extremity. Dr. Berezin found that appellant's left lower extremity exhibited decreased sensation consistent with superficial peroneal nerve injury of five percent. An Office medical adviser reviewed Dr. Berezin's report on November 19, 2007 and concurred with his findings.

By decision dated January 9, 2008, the Office granted appellant schedule awards for five percent impairment of her left lower extremity and nine percent impairment of her right lower extremity.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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 to 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, the Office adopted the fifth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁴

The Act 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 an examination.⁵ The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser or consultant, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case.⁶

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background, must be given special weight.⁷

ANALYSIS

The Office properly determined that there was a conflict of medical opinion between appellant's physician, Dr. Goldstein, a Board-certified orthopedic surgeon, and the Office medical adviser regarding the extent of appellant's permanent impairment. It referred appellant to Dr. Berezin, a Board-certified orthopedic surgeon, to resolve the conflict. Dr. Berezin provided appellant's range of motion for the right lower extremity and found that she had three

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

⁵ 5 U.S.C. §§ 8101-8193, 8123.

⁶ 20 C.F.R. § 10.321.

⁷ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

percent impairment due to loss of inversion and eversion.⁸ Appellant did not demonstrate a ratable impairment due to loss of range of motion of the left lower extremity. Dr. Berezin further found that appellant exhibited loss of sensation in the right lower extremity due to lateral plantar nerve deficit for five percent impairment.⁹ Appellant demonstrated total right lower extremity impairment of eight percent.¹⁰ In regard to appellant's left lower extremity, Dr. Berezin found five percent impairment of the superficial peroneal nerve.¹¹ As the impartial medical adviser, Dr. Berezin's report is entitled to special weight and his findings were accurately correlated with the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant has no more than nine percent impairment of her right lower extremity and five percent impairment of her left lower extremity for which she received schedule awards.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 26, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁸ A.M.A., *Guides* 537, Table 17-11; Table 17-12.

⁹ *Id.* at 552, Table 17-37.

¹⁰ *Id.* at 604, Combined Values Chart.

¹¹ *Id.* at Table 17-37.