

In a July 31, 2007 report, Dr. Kenneth Sullivan, a Board-certified diagnostic radiologist, reviewed findings of a magnetic resonance imaging (MRI) scan of appellant's left ankle. He concluded that a lateral ligamentous injury was demonstrated as the anterior talofibular ligament was completely torn and the calcaneofibular ligament was probably torn. Dr. Sullivan also noted that there was edema in the anterior tibiofibular ligament and fluid extending between the distal tibia and fibula suggesting a high ankle sprain. In an August 2, 2007 report, Dr. Gregory Markarian, a Board-certified orthopedic surgeon, diagnosed left ankle syndesmosis fraying and tear of the injured talar fibular ligament and calcaneofibular ligament. He recommended physical therapy. In a November 12, 2007 report, Dr. Markarian discharged appellant and advised that he could return to work without restrictions because he had reached maximum medical improvement.

On March 7, 2008 appellant filed a claim for a schedule award and submitted a February 15, 2008 report from Dr. Luis Munoz, an occupational medicine specialist, who diagnosed left ankle sprain and anterior talofibular ligament tear and found that appellant, was at maximum medical improvement. Dr. Munoz noted that appellant was able to perform his regular-duty work in his regular job position. He measured range of motion of the left ankle as 13 degrees of dorsiflexion, 17 degrees of inversion and 8 degrees of eversion with the remaining measurements within normal limits. Dr. Munoz determined that appellant had 10 percent "plantar dorsiflexion foot impairment," 3 percent "ankle foot inversion impairment" and 3 percent "ankle foot eversion impairment" according to Tables 17-11 and 17-12 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). He also determined that appellant had a final lower extremity impairment of 11 percent according to the Combined Values Chart on page 604 of the A.M.A., *Guides* and 4 percent whole person impairment.

On June 25, 2008 an Office medical adviser reviewed the medical reports of record. He noted that the physical examination performed did not demonstrate atrophy or tenderness and there was some decreased left ankle eversion and inversion range of motion. The Office medical adviser determined that appellant had zero percent lower extremity impairment for 13 degrees of dorsiflexion, zero percent lower extremity impairment for 55 degrees of plantar flexion, two percent lower extremity impairment for 17 degrees of inversion and two percent lower extremity impairment for 8 degrees of eversion, citing to Tables 17-11 and 17-12 on page 537 of the A.M.A., *Guides*. He concluded that appellant had a total of four percent permanent impairment of the left leg due to loss of range of motion. The Office medical adviser noted that this total differed from Dr. Munoz's report because the value for the dorsiflexion had been inappropriately calculated using Table 17-11. He also concluded that the date of maximum medical improvement was November 12, 2007.

By decision dated July 23, 2008, the Office issued appellant a schedule award for four percent permanent impairment of the left lower extremity. It paid him compensation for 11.52 weeks from November 12, 2007 to January 31, 2008.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations 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. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.²

ANALYSIS

The Office accepted that appellant sustained a left ankle sprain. Appellant submitted a report from Dr. Munoz with respect to the degree of impairment to the left lower extremity. In Dr. Munoz's report, he provided the values for appellant's range of motion and the corresponding calculations. His findings included 55 degrees of plantar flexion, 13 degrees of dorsiflexion, 17 degrees of inversion and 8 degrees of eversion. Dr. Munoz applied these values to Tables 17-11 and 17-12 on page 537 of the A.M.A., *Guides* to determine the individual lower extremity impairment percentages for the plantar flexion, dorsiflexion, inversion and eversion, which he concluded was zero percent, seven percent, two percent and two percent, respectively. He then applied these percentages to the Combined Values Chart on page 604 of the A.M.A., *Guides* to conclude that appellant had 11 percent lower extremity impairment. However, the Board notes that Table 17-11 of the A.M.A., *Guides* indicates no percentage of impairment is assigned to 13 degrees of dorsiflexion. Rather, dorsiflexion impairment is only attributed to a range of motion between 0 and 10 degrees.³ Although Dr. Munoz correctly determined that appellant's inversion and eversion impairment totaled four percent of the leg, his incorrect dorsiflexion impairment rating caused an improper calculation of appellant's lower extremity impairment. Additionally, his calculation for whole person impairment is not recognized under the Act.⁴

After receiving Dr. Munoz's report, the Office properly referred the matter to its Office medical adviser.⁵ The Office medical adviser reviewed the medical reports and properly

¹ 5 U.S.C. §§ 8101-8193. See 5 U.S.C. § 8107.

² See 20 C.F.R. § 10.404; *R.D.*, 59 ECAB ___ (Docket No. 07-379, issued October 2, 2007).

³ The Board notes that Table 17-11 of A.M.A., *Guides* uses the word "extension" to indicate dorsiflexion motion.

⁴ See 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a); see also *Tommy R. Martin*, 56 ECAB 273 (2005) (whole man impairment ratings are not provided for under the Act as section 8107 provides a compensation schedule in terms of specific members of the body).

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); *L.H.*, 58 ECAB ___ (Docket No. 06-1691, issued June 18, 2007) (the Act's procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*).

evaluated appellant's left leg impairment. His findings, derived from the range of motion findings provided by Dr. Munoz, noted 55 degrees of plantar flexion, 13 degrees of dorsiflexion, 17 degrees of inversion and 8 degrees of eversion. The Office medical adviser applied the plantar and dorsiflexion values to Table 17-11 of the A.M.A., *Guides* and correctly found zero percent impairment for each value. He indicated, as noted, that Dr. Munoz incorrectly applied Table 17-11 of the A.M.A., *Guides* with regard to dorsiflexion impairment percentage. He applied the inversion and eversion values to Table 17-12 of A.M.A., *Guides* and determined that appellant had two percent impairment for both values. Dr. Munoz added the impairment values of two percent inversion impairment and two percent eversion impairment to total four percent permanent injury. The Office medical adviser further advised that, upon reviewing the medical record and explained that examination findings did not indicate that appellant demonstrated no atrophy or tenderness. Moreover, the medical adviser explained the reason why his calculation differed from that of Dr. Munoz.

The Board finds that the Office medical adviser properly determined appellant's permanent impairment. There is no other medical evidence, consistent with the A.M.A., *Guides*, showing that appellant has greater than four percent impairment of the left leg. Accordingly, the medical evidence establishes that appellant has no more than four percent left lower extremity impairment.

CONCLUSION

The Board finds that appellant has no more than a four percent left lower extremity impairment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 23, 2008 is affirmed.

Issued: March 20, 2009
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