

surgeon, performed open reduction and internal fixation surgery on appellant's left tibia and fibula. The surgery was authorized by the Office.

In February 2007, appellant returned to light-duty work for the employing establishment. On March 21, 2007 Dr. Chadha stated that appellant had wonderful strength and balance. He noted that dorsiflexion of appellant's left foot might remain restricted as a result of minimal residual cartilage damage which might result in future post-traumatic arthritis. On April 18, 2007 appellant had left ankle dorsiflexion/extension of 15 degrees and plantar flexion of 50 degrees.

By report dated May 16, 2007, appellant's strength in his left ankle was almost equal to that of his right ankle. Dr. Chadha indicated that appellant could return to full-duty work and he did so shortly, thereafter. On June 13, 2007 he indicated that appellant's left ankle condition was permanent and stationary. On examination appellant had left ankle dorsiflexion/extension of 10 degrees and plantar flexion of 60 degrees, the distal neurological examination was normal and strength was rated at 5/5. Appellant could walk on his heels and toes without any difficulty and there was no ankle effusion. He indicated that he could tolerate full-duty work and that he had been able to run three miles on a treadmill and walk on uneven terrain. Dr. Chadha stated:

“According to the [American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), appellant] has a disability rating, which is restricted in plantar flexion. Therefore, according to Table 17-11 on page 537, [appellant] has mild impairment rated at 10 percent moderate ankle motion impairment. The foot impairment is 21 percent, lower extremity impairment 15 percent, and a total of 6 percent whole person impairment.”

On April 3, 2008 appellant filed a claim for a schedule award due to his employment-related left ankle injury.

On July 27, 2008 Dr. Leonard A. Simpson, a Board-certified orthopedic surgeon, who served as an Office medical adviser, reviewed the medical evidence and offered an opinion on appellant's permanent impairment. He indicated that appellant had left ankle dorsiflexion/extension of 10 degrees and plantar flexion of 60 degrees. According to Table 17-11 of the A.M.A., *Guides*, this would be assessed as a “mild” impairment or seven percent impairment of the left leg for loss of dorsiflexion/extension. Dr. Simpson indicated that there would be no rating for the plantar flexion of 60 degrees. The records did not document atrophy or lower extremity weakness and therefore there was no impairment on this basis. Dr. Simpson recommended 15 percent impairment of the left leg but posited that the medical evidence only supported 7 percent impairment.

In an August 4, 2008 decision, the Office granted appellant a schedule award for seven percent permanent impairment of his left leg. The award ran for 20.16 weeks from June 13 to November 1, 2007.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² 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 A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.³

ANALYSIS

The Office accepted that on December 25, 2006 appellant sustained a closed bimalleolar fracture of his left ankle when he tripped and fell on uneven terrain. On January 3, 2007 Dr. Chadha, an attending Board-certified orthopedic surgeon, performed open reduction and internal fixation surgery on appellant's left tibia and fibula. Appellant returned to full-duty work in May 2007.

In an August 4, 2008 decision, the Office granted appellant a schedule award for seven percent permanent impairment of his left leg. It based this award on the June 13, 2008 findings of Dr. Chadha⁴ as interpreted by Dr. Simpson on July 27, 2008. The Board finds that Dr. Simpson properly determined that appellant had seven percent permanent impairment of his left leg.

Dr. Simpson properly applied the standards of the A.M.A., *Guides* by calculating that, under Table 17-11, appellant's left ankle dorsiflexion/extension of 10 degrees and plantar flexion of 60 degrees (observed by Dr. Chadha on June 13, 2008) warranted seven percent impairment rating for dorsiflexion/extension but no impairment rating for the plantar flexion.⁵ Dr. Simpson also properly noted that the records did not document left leg atrophy or weakness and therefore there was no impairment on this basis.⁶

On June 13, 2008 Dr. Chadha stated that under the A.M.A., *Guides* appellant has "a disability rating, which is restricted in plantar flexion. Therefore, according to Table 17-11 on page 537, [appellant] has mild impairment rated at 10 percent moderate ankle motion

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *Id.* See *Michele Tousley*, 57 ECAB 130 (2005).

⁴ Dr. Chadha indicated that appellant's left ankle condition was permanent and stationary by June 13, 2007.

⁵ See A.M.A., *Guides* 537, Table 17-11.

⁶ Dr. Chadha had also indicated that appellant did not have any sensory loss in his legs. See A.M.A., *Guides* 530-33, 550-54 regarding atrophy, weakness and sensory loss of the legs.

impairment. The foot impairment is 21 percent, lower extremity impairment 15 percent, and a total of 6 percent whole person impairment.” However, it is unclear why Dr. Chadha indicated that appellant had 15 percent impairment of his left leg. Such a finding would not be warranted by application of Table 17-11 of the A.M.A., *Guides*. Dr. Chadha did not explain how this rating was made in accordance with the A.M.A., *Guides* and therefore it is of limited probative value regarding appellant’s permanent impairment.⁷

As the report of the Dr. Simpson provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.⁸ The Office properly relied on this opinion to find that appellant did not meet his burden of proof to establish that he has more than seven percent permanent impairment of his left leg, for which he received a schedule award.⁹

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has more than seven percent permanent impairment of his left leg, for which he received a schedule award.

⁷ See *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant’s permanent impairment).

⁸ See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

⁹ On appeal appellant alleged that Dr. Simpson applied Table 17-1 rather than Table 17-11 of the A.M.A., *Guides*. However, it is clear from the record that he applied Table 17-11.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 4, 2008 decision is affirmed.

Issued: May 21, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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