

Office medical adviser's review of the medical record. Pursuant to the third edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* A.M.A., *Guides* (5th ed. 2001).¹ the medical adviser calculated that appellant had 10 percent impairment of both legs due to pain and discomfort and 35 percent impairment due to loss of dorsiflexion, plantar flexion, inversion and eversion, due to edema from his chronic compartment syndrome. The medical adviser combined these impairments to total 42 percent impairment of each lower extremity.

On September 15, 2008 appellant filed a claim for an additional schedule award.

In an October 29, 2008 report, Dr. William N. Grant, a Board-certified internist, noted that appellant had constant pain in his lower extremities from the femur to the ankles. He noted that if appellant stood or walked for more than half an hour he had unbearable pain in both lower extremities. Appellant also had leg pain with prolonged sitting and at night. In addition to pain, his legs would swell during the late day hours and if he attempted to lift, push or pull objects greater than five pounds. Based upon these symptoms, Dr. Grant stated that appellant's constant claudication, pain and swelling in his legs caused 39 percent lower extremity impairment of both legs, pursuant to Table 17-38, page 554 of the fifth edition of the A.M.A., *Guides*.

On December 17, 2008 the Office medical adviser reviewed the new medical report and concurred with Dr. Grant that, pursuant to Table 17-38, page 554 of the fifth edition of the A.M.A., *Guides*, appellant had 39 percent impairment of both lower extremities due to constant claudication or pain with walking.

By decision dated April 30, 2009, the Office denied appellant's claim for an additional schedule award as his permanent impairment to the legs was not more than the 42 percent impairment for which he had already received compensation.

On May 5, 2009 appellant requested a hearing before the Branch of Hearings and Review.

In a report dated May 15, 2009, Dr. Grant explained that his impairment rating of 39 percent, reported on October 29, 2008, was in addition to the 42 percent bilateral lower extremity impairment award appellant had previously received.

By decision dated December 9, 2009, an Office hearing representative affirmed the April 30, 2009 decision. He found that the medical evidence failed to establish impairment rating greater than the previous award of 42 percent to each lower extremity.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member

¹ A.M.A., *Guides* (5th ed. 2001).

or function.² Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³ For schedule awards prior to May 1, 2009, the impairment is evaluated under the fifth edition.⁴

ANALYSIS

The Board finds that appellant has not established that he has more than 42 percent permanent impairment to each lower extremity.

Appellant's 1993 schedule award was based upon his permanent impairment due to pain and edema. He requested an additional schedule award in 2008 and his permanent impairment was again evaluated by Dr. Grant based upon pain and edema. Dr. Grant evaluated appellant's permanent impairment pursuant to Table 17-38, at page 554. After noting that appellant's symptoms prevented further activity after a half hour of walking, standing, sitting, he graded appellant's impairment as a Class 2 impairment, which allowed an impairment of up to 39 percent. Dr. Grant reported that appellant had the maximum allowable Class 2 impairment of 39 percent bilaterally of both lower extremities. The Office medical adviser reviewed Dr. Grant's report and concurred in his finding. The Board has reviewed the evidence of record and finds that appellant properly falls into the Class 2 impairment of Table 17-38, which allows a maximum award of 39 percent permanent impairment of each lower extremity. A Class 3 impairment, which would allow a schedule award up to 69 percent, would be allowable if appellant had intermittent claudification on walking as few as 25 yards and no more than 100 yards or marked edema only partially controlled by elastic supports or vascular damage evidenced by healed amputation of two or more digits of one extremity or persisting vascular disease or superficial ulceration. Dr. Grant's findings of symptoms after a half hour of activity do not fit the criteria of Class 3. Moreover, he did not provide any findings that would place appellant into Class 3 based upon marked edema only partially controlled by elastic supports or vascular disease with healed amputation or evidence of persistent vascular disease or superficial ulceration.

The Board finds that the medical evidence establishes appellant's impairment at 39 percent impairment of each leg. An additional award would be duplicative of the 42 percent award already granted for the same findings of permanent impairment due to pain and edema.

CONCLUSION

The Board finds that appellant has not established that he has a bilateral permanent impairment of the lower extremities greater than the 42 percent previously awarded.

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ *A. George Lampo*, 45 ECAB 441 (1994).

⁴ FECA Bulletin Docket No. 09-03 (March 15, 2009).

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2010
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