

bilateral plantar fibromatosis, lesion of the plantar nerve on the left and left calcaneal spur on November 27, 2007.

On November 2, 2006 Dr. James Moitoza, an attending Board-certified orthopedic surgeon, performed extracorporeal shockwave treatment of the left heel and left posterior tibial nerve block. He released appellant to return to light-duty work on December 18, 2006. On November 7, 2007 Dr. Moitoza performed an open left plantar fascial release with spur excision and injection of the right medial plantar fascia.

On April 14, 2008 Dr. Moitoza advised that appellant's plantar fasciitis condition was permanent and stationary. He stated that appellant's gait was normal with no antalgia. Dr. Moitoza found negative medial lateral compression and diagnosed resolved left plantar fasciitis. He released appellant to return to full-time work with no restrictions. Dr. Moitoza found that appellant had 10 degrees of ankle dorsiflexion, 50 degrees of plantar flexion, 25 degrees of inversion and 10 degrees of eversion. He concluded that appellant had no measurable muscle atrophy, normal range of motion, no gait derangement and normal muscle strength. Dr. Moitoza stated that appellant had no applicable impairment of the left lower extremity. He completed a report on June 19, 2008 and diagnosed recurrent left peroneus brevis and longus tendinitis.

Appellant requested a schedule award on June 24, 2008. The Office referred the medical records to the district medical adviser on June 27, 2008. On July 5, 2008 the district medical adviser noted that the only positive finding reported by Dr. Moitoza was minimal occasional left lateral forefoot pain, which was not ratable. He concluded that appellant did not sustain any ratable impairment due to his accepted conditions.

On July 17, 2008 Dr. Moitoza noted appellant's bilateral foot pain. He diagnosed subacute right plantar fasciitis, left interdigital neuroma, subacute left peroneus brevis and longus tendinitis. Dr. Moitoza stated, "[Appellant's] left foot is still not permanent and stationary." In a letter dated July 17, 2008, appellant noted Dr. Moitoza considered that his left plantar fasciitis reached maximum medical improvement on April 14, 2008. However he noted that Dr. Moitoza continued to treat him for a left neuroma condition as well as tendinitis of the left foot.

By decision dated November 20, 2008, the Office denied appellant's claim for a schedule award, finding that the medical evidence failed to establish permanent impairment.

Appellant, through his attorney, requested an oral hearing, which was held on March 18, 2009. He stated that he continued to receive treatment for his left foot. The hearing representative noted that appellant had not yet reached maximum medical improvement as to his left foot and that the claim was not in posture for decision regarding any permanent impairment.

By decision dated May 20, 2009, the hearing representative affirmed the Office's November 20, 2008 decision, finding that appellant had not established permanent impairment or that he had reached maximum medical improvement.¹

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ 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 regulations as the appropriate standard for evaluating schedule losses.⁴ 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.⁵

Before a schedule award can issue, it must be established that the injured employee has reached maximum medical improvement. Once reached, a permanent impairment rating may be performed.⁶

ANALYSIS

Appellant filed two claims for conditions of his feet. The Office accepted bilateral plantar fibromatosis, left plantar fasciitis, a lesion of the plantar nerve and a left calcaneal spur as arising from his employment duties. Appellant's attending physician, Dr. Moitoza, a Board-certified orthopedic surgeon, completed a report on April 14, 2008 and opined that appellant's left plantar fasciitis condition was permanent and stationary. He found, however, that appellant had no permanent impairment. The Office medical adviser found he was not entitled to a schedule award. Appellant requested a schedule award on June 24, 2008. The district medical adviser reviewed this report and agreed that appellant had no ratable permanent impairment under the A.M.A., *Guides*. The Office denied appellant's claim for a schedule award on the grounds that he had not established a permanent impairment due to the accepted condition of left

¹ The hearing representative directed the Office to refer the case file to the district medical adviser for his opinion on additional diagnoses and whether right ankle surgery was necessary. As this aspect of appellant's claim is in an interlocutory status, it is not before the Board. 20 C.F.R. § 501.2(c)(2).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (1999).

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (August 2002).

⁶ See *Patricia J. Penney-Guzman*, 55 ECAB 757 (2004); *Patricia K. Cummings*, 53 ECAB 623 (2002).

plantar fasciitis on November 20, 2008. The Board finds that the record does not contain any medical evidence supporting appellant's claim for permanent impairment due to the accepted condition of left plantar fasciitis and that appellant is not, therefore, entitled to a schedule award due to this condition.

CONCLUSION

Appellant did not submit sufficient medical evidence to establish he sustained permanent impairment of his left foot to warrant a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2010
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