

FACTUAL HISTORY

On November 10, 2008 appellant, then a 35-year-old border patrol agent, filed an occupational disease claim alleging that as a result of 10 years of hiking, all-terrain-vehicle (ATV) riding and running after people on foot he sustained Morton's neuroma on his right foot. On November 25, 2008 the Office accepted his claim for lesion of a plantar nerve on the right. On December 29, 2008 Dr. April R. Glesinger, a podiatrist, performed a surgical procedure to excise a neuroma of the right third interspace. The Office paid wage-loss compensation and medical benefits. On March 6, 2009 Dr. Glesinger indicated that appellant was released to return to work full duty with no restrictions.

On May 28, 2009 the Office asked Dr. Glesinger for her assessment as to any impairment. On June 5, 2009 Dr. Glesinger listed appellant's diagnosis as five months status post neuroma surgery and indicated that he was doing well. Appellant had no pain with gait or to palpation. Dr. Glesinger stated that he was released back to work full duty with no restrictions. She commented that surgery was performed with good outcome and that no further treatment was recommended.

On August 24, 2010 the Office referred appellant to Dr. Mark E. Frankel, a Board-certified orthopedic surgeon, for a second opinion. In a report dated September 3, 2009, Dr. Frankel noted that appellant had reached maximum medical improvement. Applying the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008) (A.M.A., *Guides*), Dr. Frankel noted that, according to Table 16-25 page 550, he used the criteria for a lesser toe and found that appellant had no motion defects and that he had dorsiflexion of the metaphalangeal (MP) joint and of the intraphalangeal (IP) joint at over 10 degrees. Under the grade modifier adjustments, he found that appellant had a zero functional history, zero physical examination and zero clinical studies and assigned a grade A, which gave him final left extremity impairment (LEI) of zero. Dr. Frankel also found Table 16-2 pages 501-08 applicable under the criteria of minor toe and assigned him a grade A and final LEI of zero based on functional history, physical examination and clinical studies. He further noted joint range of motion of the MP of the third and fourth toes over 10 degrees and of the IP joints of over 10 degrees. Therefore, Dr. Frankel found total LEI for both of these joints zero. He then determined that appellant's class was zero and his combined LEI were zero, which indicated a diagnosis-based impairment of his final LEI of zero. Dr. Frankel concluded that appellant's final combined impairment sum was zero and the regional impairment was zero.

On October 1, 2009 the Office referred the record to an Office medical adviser for review. In a report dated October 11, 2009, the Office medical adviser noted that appellant's treating podiatrist found that appellant's condition had resolved with normal surgical incision site and no pain on gait or palpation. The Office medical adviser also noted Dr. Frankel's discussion of impairment. The Office medical adviser concluded that he would consider utilizing Table 16-12, peripheral nerve impairment -- lower extremity impairments, in assessing the impairment. As appellant had no objective sensory or motor deficit, he had a Class 0 impairment for medial plantar or lateral plantar nerve. He also noted a date of maximum medical improvement of June 5, 2009.

By decision dated October 22, 2009, the Office found that appellant was not entitled to a schedule award as the medical evidence did not reveal any permanent impairment due to the accepted condition.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing federal regulations,² 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 for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³ For decisions issued after May 1, 2009, the sixth edition will be used.⁴

In addressing lower extremity impairments, the sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).⁵ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁶

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the Office medical adviser providing rationale for the percentage of impairment specified.⁷

ANALYSIS

It is well established that when the examining physician does not provide an estimate of impairment conforming to the A.M.A., *Guides*, the Office may rely on the impairment rating provided by a medical adviser.⁸ Dr. Glesinger, appellant's treating surgeon, noted that appellant had no pain with gait or to palpation. She stated that he was released back to full duty with no restrictions and that surgery had a good outcome and no further medical treatment was necessary. Dr. Frankel, the second opinion physician, applied the sixth edition of the A.M.A., *Guides* to find that appellant had no impairment due to his accepted right plantar nerve lesion

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *Id.* at § 10.404(a).

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

⁵ A.M.A., *Guides* (6th ed. 2008), 494-531; *see J.B.*, 61 ECAB ____ (Docket No. 09-2191, issued May 14, 2010).

⁶ *Id.* at 515-21.

⁷ *See, e.g., C.K.*, 61 ECAB ____ (Docket No. 09-2371, issued August 18, 2010).

⁸ *See J.Q.*, 59 ECAB 366 (2008).

and neuroma excision surgery. The Office medical adviser also found that appellant had a no permanent impairment under the A.M.A., *Guides*.

The sixth edition of the A.M.A., *Guides* provides that lower extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula noted above.⁹ In the instant case, the Office medical adviser properly discussed the physical findings of appellant's surgeon and Dr. Frankel, the second opinion physician. He then determined that pursuant to Table 16-12 of the sixth edition of the A.M.A., *Guides*, with no objective sensory or motor deficit, the individual would have a Class 0 impairment for medial plantar or lateral plantar nerve.¹⁰ The Office medical adviser properly applied the A.M.A., *Guides* in reaching his conclusion. The Board notes that Dr. Frankel came to the same conclusion using a slightly different methodology. There is no medical evidence of record to support permanent impairment to the right foot.

On appeal, appellant contends that he is entitled to an award as he experience pain in his foot. As noted, the A.M.A., *Guides* do not support impairment. The Board has held that factors such as limitations on daily activities are not considered in the calculation of a schedule award.¹¹ Accordingly, appellant has not met his burden of proof to establish his schedule award claim.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he is entitled to a schedule award.

⁹ FECA Bulletin No. 09-03 (issued March 15, 2009).

¹⁰ A.M.A., *Guides* 536, Table 16-2.

¹¹ *E.L.*, 59 ECAB 405 (2008).

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 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