



2003 he filed a claim for a schedule award. By decision dated October 1, 2003, the Office issued a schedule award for 14 percent impairment of the right lower extremity.

On November 19, 2008 appellant filed a claim for an increased schedule award. In a December 19, 2008 report, Dr. Todd S. Hochman, a Board-certified internist, opined that appellant had 26 percent impairment to the right lower extremity as a result of the November 14, 2000 employment injury. Applying the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*), Dr. Hochman addressed loss of range of motion to the right ankle. He noted that appellant had a plantar flexion to 15 degrees, which was a seven percent impairment;<sup>1</sup> 8 degrees of dorsiflexion, which was a seven percent impairment;<sup>2</sup> 16 degrees of inversion, which was two percent impairment, and 5 degrees of eversion, which was also two percent impairment.<sup>3</sup> He added the impairment to total 18 percent impairment of the right leg. On manual muscle testing appellant had strength grades of 4/5 with inversion and eversion that was a 5 percent impairment for inversion and 5 percent for eversion or 10 percent impairment for loss of strength.<sup>4</sup> Combining the impairment of 10 percent with 18 percent, resulted in a total 26 percent impairment of the right lower extremity pursuant to the A.M.A., *Guides*.

The Office referred the case to the Office medical adviser to determine appellant's degree of impairment for schedule award purposes. In a March 9, 2009 report, the Office medical adviser agreed with Dr. Hochman's calculations for impairment due to loss of range of motion. The Office medical adviser added the impairment values to find 18 percent as rated by Dr. Hochman. He noted, however, that Dr. Hochman incorrectly combined range of motion and manual muscle testing data. The Office medical adviser noted that Table 17-2 at page 526, the Cross-Usage Chart clearly precluded combining range of motion and muscle strength impairment. Therefore, the rating should be based on the modality resulting in the greatest impairment. The Office medical adviser found that appellant had an 18 percent impairment to the right lower extremity.

By decision dated April 29, 2009, the Office granted a schedule award for an additional 4 percent impairment of appellant's right leg, representing a total impairment to the right lower extremity of 18 percent.

On May 18, 2009 appellant requested an oral hearing. At the hearing held on August 3, 2009, the hearing representative agreed to leave the record open for 30 days for submission of additional evidence. No further evidence was received.

By decision dated October 20, 2009, the hearing representative found that appellant did not have more than 18 percent impairment to his right leg and affirmed the April 29, 2009 schedule award.

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<sup>1</sup> A.M.A., *Guides* 537, Table 17-11.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at Table 17-12.

<sup>4</sup> A.M.A., *Guides* 532, Table 17-8.

## LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act<sup>5</sup> and its implementing regulations<sup>6</sup> 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.<sup>7</sup>

## ANALYSIS

The Board finds that appellant has no more than an 18 percent impairment to his right lower extremity. Both Dr. Hochman and the Office medical adviser properly applied the A.M.A., *Guides* when calculating appellant's impairment for loss of range of motion. Both physicians noted that appellant had seven percent impairment for ankle plantar flexion of 15 degrees and a seven percent impairment for ankle extension of 8 degrees.<sup>8</sup> Both Dr. Hochman and the Office medical adviser found a two percent impairment for 16 degrees of hindfoot inversion and two percent impairment for 5 degrees of hindfoot eversion.<sup>9</sup> Total loss of range of motion to the right leg was obtained by adding these figures for 18 percent impairment to the right leg.

Dr. Hochman rated an additional impairment based on muscle weakness of the right ankle but, as noted by the Office medical adviser, Dr. Hochman incorrectly combined loss of range of motion with manual muscle testing data. The A.M.A., *Guides* provide that range of motion and muscle strength cannot be used in combination to rate impairment.<sup>10</sup>

The Board finds that the Office medical adviser used the appropriate tables of the A.M.A., *Guides* to determine the percentage of impairment to appellant's right leg. The Office medical adviser accurately applied the rating criteria to Dr. Hochman's findings and explained why Dr. Hochman could not combine weakness in conjunction with loss of motion. The Board finds that, as the Office's medical adviser properly applied the A.M.A., *Guides* to Dr. Hochman's clinical findings, his opinion represents the weight of the medical evidence in this case.<sup>11</sup>

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> *Id.*

<sup>8</sup> A.M.A., *Guides* 537, Table 17-11.

<sup>9</sup> *Id.* at Table 17-12.

<sup>10</sup> *Id.* at 526, Table 17-2.

<sup>11</sup> See *Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

**CONCLUSION**

The Board finds that appellant has no more than an 18 percent impairment of his right lower extremity.

**ORDER**

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

Issued: October 4, 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