

she filed a claim for a schedule award.² The Office subsequently wrote to appellant's podiatrist, Dr. Naim G. Shaheed, requesting that he provide an impairment rating in accordance with the 6th edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2008).

Dr. Shaheed examined appellant on July 21, 2009, and in a report dated September 12, 2009 he found one percent impairment of the left lower extremity due to plantar fasciitis. He noted, among other things, a positive nerve conduction study.³ Dr. Shaheed also submitted a September 17, 2009 impairment rating worksheet, which the Office provided. He noted that appellant had intense local pain to the plantar left heel, but diffuse pain to the left lower back and leg consistent with the sciatic nerve tract. Dr. Shaheed also indicated that appellant had left-side weakness more related to ankle eversion. There was no evidence of atrophy. Dr. Shaheed further noted that the weakness was localized to the gastrocnemius/soleus complex. Appellant reached maximum medical improvement on December 20, 2007.

The district medical adviser (DMA) reviewed Dr. Shaheed's findings and in a report dated October 8, 2009, found zero percent impairment of the lower extremities. With respect to the left lower extremity, he noted that the March 7, 2007 nerve conduction study indicated that appellant's difficulties with her left lower extremity were caused by S1 radiculopathy, which was not an accepted condition. The DMA found no impairment of the left lower extremity on account of plantar fibromatosis. As to appellant's right lower extremity, he indicated that there was no reference to any impairment of this extremity found in records.

By decision dated October 21, 2009, the Office denied appellant's claim for a schedule award. The decision was based upon the DMA's October 8, 2009 report.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁴ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A.,

² Appellant previously filed for a schedule award on January 5, 2009. However, the contemporaneous medical evidence indicated that she had not yet reached maximum medical improvement.

³ The record includes a March 7, 2007 nerve conduction velocity (NCV) test that was interpreted as abnormal. The results were noted to be consistent with "S1 radiculopathy," which "may be due to a herniated nucleus pulposus and/or trauma to the nerve at that level." The NCV findings were also consistent with sensory neuropathy. An electromyography (EMG) was recommended for locating the compressed area of the nerve.

⁴ For a total loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2) (2006).

Guides as the appropriate standard for evaluating schedule losses.⁵ Effective May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6th ed. 2008).⁶

ANALYSIS

Appellant's attorney argues that the schedule award should have been approved. He noted that the claim was accepted for left lower extremity nerve damage in addition to bilateral plantar fasciitis. Counsel contends that the Office should have referred appellant for a second opinion examination rather than relying exclusively on the DMA's report.

The Board finds that the case is not in posture for decision. While the DMA was correct in noting that the Office had not accepted appellant's claim for S1 radiculopathy, he makes no mention of the fact that the claim was accepted for left peripheral neuropathy. He did not specifically address whether the March 7, 2007 NCV test results are consistent with the accepted condition of left peripheral neuropathy. Because the evidence relied upon by the Office does not fully address the extent of any employment-related permanent impairment, the case shall be remanded for further medical development. On remand, the Office shall inquire of the DMA whether appellant has any lower extremity impairment due to her accepted left peripheral neuropathy and/or plantar fasciitis. After such further development as the Office deems appropriate, a *de novo* decision shall be issued regarding appellant's claim for a schedule award.

CONCLUSION

The case is not in posture for decision.

⁵ 20 C.F.R. § 10.404.

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Example 1 (January 2010).

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2009 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: September 10, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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