

FACTUAL HISTORY

This case has previously been before the Board.¹ By decision dated March 12, 2009, the Board remanded the case to the Office to refer appellant, a statement of accepted facts that included a description of the employment injury and the medical evidence of record to an appropriate Board-certified specialist for an opinion on whether his accepted bilateral ankle sprains had resolved and whether he had any permanent impairment caused by the accepted conditions. The physician was to provide an impairment analysis in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).² The facts of the previous Board decision are incorporated herein by reference.

In September 2009, the Office referred appellant to Dr. Barry A. Levin, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an October 26, 2009 report, Dr. Levin reviewed the medical records including x-rays and the statement of accepted facts. He noted appellant's complaint of bilateral ankle tenderness and swelling and reported that appellant was able to ambulate satisfactorily without a noticeable limp. Examination of the left ankle showed swelling on the lateral side with no sign of infection, muscle loss or skin deformity. Appellant could plantar flex beyond 20 degrees and dorsi flex beyond 10 degrees, could invert to 20 degrees and evert to 10 degrees with normal muscle strength and no neurological deficit. X-rays of his left ankle demonstrated degenerative osteophytes on the anterior part of the ankle and an ossicle to the lateral side of his malleolus. Dr. Levin advised that examination of the right ankle demonstrated similar, normal range of motion in that appellant was able to plantar flex beyond 20 degrees and dorsi flex beyond 10 degrees and inversion and eversion were beyond impaired limitation with no swelling or deformity and normal-appearing skin, good circulation, and no muscle or sensory deficit. Based on a review of the A.M.A., *Guides*, appellant had no ratable impairment to either ankle or lower extremity and maximum medical improvement was reached approximately six weeks after the March 19, 2007 injury. Dr. Levin found that appellant had fully recovered from the injury without impairment.

In a November 8, 2009 report, an Office medical adviser reviewed the medical record, including Dr. Levin's report. He found that, based on the sixth edition of the A.M.A., *Guides*, under Table 16-2: foot and ankle regional grid, appellant best fit the diagnostic criteria with a key factor of strain tendinitis and rated him at Class 0, described as no significant objective abnormalities or muscle or tendon injury and at maximum medical improvement. The Office medical adviser concluded that appellant had no impairment of either the right or left lower extremity.

By decision dated November 17, 2009, the Office found the weight of the medical evidence rested with the opinion of Dr. Levin and denied appellant's claim for a schedule award.

¹ Docket No. 09-5 (issued March 12, 2009). On March 19, 2007 appellant, then a 55-year-old electronic technician, sustained employment-related bilateral ankle sprains when he fell from a ladder at work. He retired on September 3, 2007 and on December 17, 2007 filed a schedule award claim.

² A.M.A., *Guides* (6th ed. 2008).

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act,³ and its implementing federal regulations,⁴ 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.⁵ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶ For decisions issued after May 1, 2009, the sixth edition will be used.⁷

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁸ Under the sixth edition, for lower extremity impairments the evaluator identifies 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).⁹ The net adjustment formula is (GMFH-CDX) + (GMPE - CDX) + (GMCS-CDX).¹⁰

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.¹¹

ANALYSIS

The Office accepted that appellant sustained bilateral ankle sprains. In an October 26, 2009 report, Dr. Levin, the Office referral physician, provided findings on examination. Following review of the A.M.A., *Guides*, he determined that appellant had no ratable impairment

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁸ A.M.A., *Guides*, *supra* note 2 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

⁹ A.M.A., *Guides*, *supra* note 2 at 494-531.

¹⁰ *Id.* at 521.

¹¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

to either ankle or lower extremity. The file was routed to the Office medical adviser for an opinion concerning the nature or percentage of permanent impairment in accordance with the A.M.A., *Guides*. Based on Dr. Levin's physical examination, the Office medical adviser applied the sixth edition of the A.M.A., *Guides*. Under Table 16-2, appellant best fit the diagnostic criteria with a key factor of strain tendinitis and was rated as Class 0, or no impairment, described as no significant objective abnormalities or muscle or tendon injury and at maximum medical improvement.¹² Dr. Levin provided ankle range of motion measurements which do not constitute impairment under the sixth edition of the A.M.A., *Guides* under Table 16-20 and Table 16-22.¹³ The Office medical adviser properly concluded that appellant had no permanent impairment of either lower extremity.

Dr. Levin advised that any impairment appellant had was secondary to arthritis of the ankles. It is well established that in determining entitlement to a schedule award, preexisting impairment to the schedule member is to be included.¹⁴ In a November 29, 2007 report, Dr. Michael J. Platto, an attending Board-certified physiatrist, diagnosed moderate underlying degenerative joint disease of the ankles. In a June 11, 2008 report, he noted that appellant had a lateral component cartilage interval of 2.7 millimeters as demonstrated by a June 10, 2008 x-ray of the left ankle. Dr. Platto advised that in accordance with Table 17-31 of the fifth edition of the A.M.A., *Guides*, appellant would be entitled to five percent impairment due to the cartilage interval. As noted, however, for decisions issued on or after May 1, 2009, the sixth edition of the A.M.A., *Guides* is to be used.¹⁵ Table 16-2 provides that an ankle cartilage interval of less than three millimeters is rated as Class 0 or no impairment.¹⁶

There is no probative medical evidence to establish that appellant has any permanent impairment of either lower extremity.¹⁷

CONCLUSION

The Board finds that appellant did not establish that he sustained permanent impairment due to his accepted bilateral ankle conditions.

¹² A.M.A., *Guides*, *supra* note 2 at 501.

¹³ *Id.* at 549.

¹⁴ *Michael C. Milner*, 53 ECAB 446 (2002).

¹⁵ FECA Bulletin No. 09-03, *supra* note 7.

¹⁶ A.M.A., *Guides*, *supra* note 2 at 506.

¹⁷ The Board notes that appellant retains the right to submit a claim for a schedule award based on new exposure or on medical evidence indicating the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 23, 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