

FACTUAL HISTORY

This case has previously been on appeal before the Board.¹ In a February 19, 2010 decision, the Board set aside and remanded the Office's March 5, 2009 schedule award decision. The Board found the case was not in posture for decision as the Office's medical adviser did not provide sufficient explanation regarding certain aspects of appellant's impairment rating and it was unclear why the Office medical adviser found the rating could not be expressed as a lower extremity rating instead of a foot rating. The Board directed the Office to obtain a medical opinion regarding the extent of any permanent impairment of the left foot or lower extremity, whichever was greater, causally related to the March 22, 2008 employment injury. The facts and history contained in the prior appeal are incorporated by reference.

On February 23, 2010 the Office requested that the Office medical adviser utilize the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6th ed. 2009) (*hereinafter*, A.M.A., *Guides*) and provide medical rationale to explain why the rating should be for the left foot and not the left lower extremity.

In a March 10, 2010 report, the Office medical adviser utilized the February 23, 2009 findings provided by the second opinion physician, Dr. Charles Denhart, a Board-certified physiatrist. He referred to the sixth edition of the A.M.A., *Guides*, Table 16-2, the foot and ankle regional grid, for a fracture and dislocation of the metatarsals.² The Office medical adviser explained that appellant fell into the Class I category, for "other metatarsal nondisplaced with abnormal examination findings." This was based on Dr. Denhart's report of pain on weight bearing in the area of the metatarsal fractures. He advised that the impairment rating could range from zero to two percent with the default or C value being one percent. The Office medical adviser determined that, due to the pain on weight bearing, the impairment rating for the metatarsal residuals would be processed at the E value which resulted in an impairment of two percent of the lower extremity. He referred to section 16-1 functional history, page 496 and section 16.2 pertaining to diagnosis-based impairment (page 497) when noting it was not appropriate rate for the second and third metatarsal fracture separately.³ The Office medical adviser noted that as the metatarsal fracture was processed as a foot rating, this was achieved using Table 16-10.⁴ He determined that the two percent of the lower extremity was equal to three percent of the foot.

The Office medical adviser explained that the reason that the rating was a foot rating rather than lower extremity ratings because lower extremity ratings do not ensue below (distal) to the ankle level. He indicated that the metatarsals were midfoot or even more distally towards the toes.⁵ The Office medical adviser subtracted the previously received award that appellant

¹ Docket No. 09-1348 (issued February 19, 2010). Appellant filed a claim when his left foot was crushed by the front wheel of a forklift. The Office accepted the claim for closed metatarsal fractures of the left foot.

² A.M.A., *Guides* 504.

³ *Id.* at 496, 497.

⁴ *Id.* at 530.

⁵ The medical adviser referenced *Gray's Anatomy*, 255-566 (29th ed. 1973).

received of one percent and determined that he was entitled to an additional schedule award of two percent to the left foot.

On March 19, 2010⁹ the Office granted appellant a schedule award for an additional two percent permanent impairment of the left foot. The award covered the period June 26 to July 24, 2008.

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. 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.⁶ Effective May 1, 2009, schedule awards are determined in accordance with the A.M.A., *Guides* (6th ed. 2008).

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).⁷ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁸

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.⁹

Section 8107(c) of the Act provides 288 weeks of compensation for total loss of a leg and 205 weeks for total loss of a foot.¹⁰ While appellant would not be entitled to receive two awards for injury to the same body part, he should be given the benefit of the more favorable allowance, as prescribed for the hands and feet in FECA Program Memorandum No. 134.¹¹

⁶ 20 C.F.R. § 10.404 (2009).

⁷ A.M.A., *Guides* (6th ed. 2008), 494-531; *see J.B.*, 61 ECAB ____ (Docket No. 09-2191, issued May 14, 2010).

⁸ A.M.A., *Guides* 515-21.

⁹ *See supra* note 7.

¹⁰ 5 U.S.C. § 8107 (c)(2) and 8107(c)(4).

¹¹ FECA Program Memorandum No. 134 (issued February 3, 1971).

ANALYSIS

The Board remanded the case for further medical development regarding the extent of any impairment of the left foot or lower extremity. On remand, the Office obtained an opinion on appellant's impairment from its medical adviser who utilized the sixth edition of the A.M.A., *Guides*.

In his March 10, 2010 report, the Office medical adviser properly determined that, for a fracture and dislocation of the metatarsals, use of Table 16-2, Foot and Ankle Regional Grid was appropriate and that appellant fit into a Class I category, for "other nondisplaced with abnormal examination findings" which indicated pain on weight bearing in the area of the metatarsal fractures.¹² He started with the default value of C and explained that, because of the pain on weight bearing, the grade severity would be processed at the E value which would warrant an impairment of two percent of the lower extremity. The Office medical adviser explained that under the A.M.A., *Guides* the other metatarsal fracture cannot be rated when a patient has two significant diagnoses, the examiner should use only the one with the highest impairment rating in that region.¹³ Furthermore, he explained that the metatarsal fracture was converted to a foot rating pursuant to Table 16-10.¹⁴ The Office medical adviser determined that the two percent of the lower extremity was equal to three percent of the foot. He subtracted the previous award of one percent and determined that appellant was entitled to an additional schedule award of two percent to the left foot. Furthermore, the Office medical adviser properly explained that the rating was a foot rating rather than a lower extremity rating as the injury did not ensue below (distal) to the ankle level. He indicated that the metatarsals were midfoot or even more distally towards the toes. The Board finds that the Office medical adviser's explanation is reasoned and is consistent with the A.M.A., *Guides*.

The Board finds that the Office medical adviser's report establishes that appellant has no more than three percent permanent impairment of the left foot. The record does not contain any evidence to establish greater impairment to the left foot in accordance with the sixth edition of the A.M.A., *Guides*. As appellant previously received a schedule award for one percent impairment of the left foot, the Office properly issued appellant a schedule award for an additional two percent impairment of the left foot.

CONCLUSION

The Board finds that appellant has not established that he has more than three percent impairment of his left foot for which he received a schedule award.

¹² A.M.A., *Guides* 504.

¹³ See *id.* at 497. See also *id.* at 496 (functional assessment is only considered for the limb impairment with the highest rating, since it is expected that this will encompass the functional limitations related to other impairments in the same limb).

¹⁴ *Id.* at 530.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 19, 2010 is affirmed.

Issued: February 17, 2011
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