

**United States Department of Labor  
Employees' Compensation Appeals Board**

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A.G., Appellant )

and )

DEPARTMENT OF THE AIR FORCE, )  
MAINTENANCE DEPARTMENT, )  
RANDOLPH AIR FORCE BASE, Texas, )  
Employer )

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**Docket No. 10-2088  
Issued: May 6, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 10, 2010 appellant filed a timely appeal from the March 18, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office properly denied appellant's claim for schedule award.

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<sup>1</sup> 5 U.S.C. § 8107.

## **FACTUAL HISTORY**

In late 2007 the Office accepted that appellant, then a 51-year-old sheet metal mechanic, sustained right plantar fibromatosis due to the walking and standing duties required by his job.<sup>2</sup> Appellant did not stop working in his regular job for the employer.

Appellant received treatment for his right foot problems from Dr. Darren J. Silvester, an attending podiatrist. He received dexamethasone phosphate injections in his right foot and wore night splints and custom orthotics as part of his treatment. On February 14, 2008 Dr. Silvester performed right foot surgery in the form of cryosurgery for thermal destruction of the right medial calcaneal nerve. The procedure was authorized by the Office.

On April 28, 2009 appellant filed a claim for a schedule award due to his accepted right foot injury.

In May 2009 the Office requested that Dr. Silvester provide an impairment rating for appellant's right foot under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009), but Dr. Silvester advised the Office that he did not complete impairment ratings. It then referred appellant to Dr. James F. Hood, a Board-certified orthopedic surgeon, for evaluation of his right foot condition under the standards of the sixth edition of the A.M.A., *Guides*.

In a December 21, 2009 report, Dr. Hood stated that as a result of his repetitive walking appellant began to complain on May 7, 2007 of pain in his right heel and arch. He noted that appellant had been treated with various modalities, including physical therapy, corticosteroid injections, orthotics and passive night splinting. Appellant continued to complain of pain in the mid portion of his right heel and was taking over-the-counter anti-inflammatory medication. Dr. Hood indicated that appellant worked on a full-time basis in his regular job for the employing establishment. Upon physical examination of the right foot, he reported that appellant had 20 degrees of dorsiflexion; 40 degrees of plantar flexion; 30 degrees of inversion; and 20 degrees of eversion. Appellant reported tenderness of the right heel pad, but there was no swelling or visible scarring. Dr. Hood stated that appellant had no Tinel's sign and that testing of the posterior tibial, anterior tibial and peroneal arteries was negative. He indicated that appellant would be rated under Table 16-2 of the sixth edition of the A.M.A., *Guides* under the portion of the diagnostic grid for soft tissue problems with the foot. Dr. Hood noted, "Because of the normalcy of the exam[ination] objectively, [appellant] would be rated under class 0 and as such would have a zero [percent] lower extremity rating."

On January 27, 2010 Dr. Ronald H. Blum, a Board-certified orthopedic surgeon serving as an Office medical adviser, stated that he had reviewed the record, including Dr. Hood's December 14, 2009 report, for the purpose of rating appellant's right leg impairment under the standards of the sixth edition of the A.M.A., *Guides*. He stated that appellant had an accepted condition of right plantar fibromatosis and posited that maximum medical improvement was

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<sup>2</sup> Appellant originally indicated that he was injured on May 7, 2007 when he felt a sharp pain in his right foot while walking at work on that date, but he later asserted that the injury occurred by walking and standing at work over a period of time.

achieved on December 14, 2009, the date of Dr. Hood's evaluation. Dr. Blum noted, "Determination of permanent impairment for the RLE [right lower extremity] is as follows. [He] describes objectively normalcy on examination. Using [Table] 16-2, p. 501, Dr. Blum recommends class 0 resulting in zero [percent] impairment for the RLE. Permanent impairment of the RLE is zero [percent]."

In a March 18, 2010 decision, the Office denied appellant's schedule award claim on the grounds that he did not meet his burden of proof to establish entitlement to schedule award compensation. It found that the opinions of Dr. Hood and Dr. Blum showed that appellant had no right foot or leg impairment under the sixth edition of the A.M.A., *Guides*.

### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>3</sup> and its implementing regulations<sup>4</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>5</sup> The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.<sup>6</sup>

In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the foot, the relevant portion of the leg for the present case, reference is made to Table 16-2 (Foot and Ankle Regional Grid) beginning on page 501. Then the associated class is determined from the Foot and Ankle Regional Grid and the adjustment grid and grade modifiers (including Functional History, Physical Examination and Clinical Studies) are used to determine what grade of associated impairment should be chosen within the class defined by the regional grid.<sup>7</sup> Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.<sup>8</sup>

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> *Id.*

<sup>6</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>7</sup> See A.M.A., *Guides* (6<sup>th</sup> ed. 2009) 499-501.

<sup>8</sup> *Id.* at 23-28.

## ANALYSIS

The Office accepted that appellant sustained right plantar fibromatosis due to the walking and standing duties required by his job. In a March 18, 2010 decision, it denied his schedule award claim on the grounds that he did not meet his burden of proof to establish entitlement to schedule award compensation. The Office based its opinion of the opinions of Dr. Hood, a Board-certified orthopedic surgeon serving as an Office referral physician and Dr. Blum, a Board-certified orthopedic surgeon serving as an Office medical adviser.

The Board finds that the opinions of Dr. Hood and Dr. Blum show that appellant does not have permanent impairment entitling him to schedule award compensation. Appellant has submitted no additional medical evidence to establish that he has permanent impairment of his right foot or leg under the standards of the sixth edition of the A.M.A., *Guides*.

In his December 21, 2009 report, Dr. Hood provided a history of appellant's right foot condition and subsequent treatment. He noted that, upon physical examination of the right foot, appellant had no Tinel's sign and that testing of the posterior tibial, anterior tibial and peroneal arteries was negative. Dr. Hood reported range of ankle motion findings and noted that, although appellant reported tenderness of the right heel pad, he had no swelling or visible scars. Dr. Blum stated that Dr. Hood indicated that appellant would be rated under Table 16-2 of the sixth edition of the A.M.A., *Guides* under the portion of the diagnostic grid for soft tissue problems with the foot, but he found that his examination showed that he fell under class 0 of the Foot and Ankle Grid because he had no significant objective abnormal findings on examination or radiographic studies.<sup>9</sup> On January 27, 2010 he stated that he had reviewed the record, including Dr. Hood's December 14, 2009 report, and noted that he agreed with Dr. Hood's assessment that appellant had no impairment under the standards of the sixth edition of the A.M.A., *Guides*.

On appeal, appellant indicated that he disagreed with the impairment rating of Dr. Hood. However, the main issue of the present case is medical in nature and must be resolved by consideration of the medical evidence of record. Appellant stated that he would rather be seen by a podiatrist, but he did not provide any evidence to disqualify Dr. Hood.

Appellant did not submit any medical evidence showing that he had permanent impairment of his right foot or leg.<sup>10</sup> As the reports of the Dr. Hood and Dr. Blum provided the only evaluations which conformed with the A.M.A., *Guides*, they constitute the weight of the medical evidence.<sup>11</sup> For these reasons, the Office properly denied appellant's schedule award claim.

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<sup>9</sup> See A.M.A., *Guides* 501, Table 16-2.

<sup>10</sup> The Office requested that Dr. Silvester, an attending podiatrist, provide an impairment rating, but he advised the Office that he did not complete impairment ratings.

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

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish entitlement to schedule award compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 18, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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