

1985 at which point she resumed her usual employment. In a decision dated March 6, 1992, the Board affirmed December 27, 1990 and May 30, 1991 OWCP decisions finding that she had not established a recurrence of disability beginning April 24, 1990 causally related to her October 10, 1985 employment injury. The facts and circumstances as set forth in the Board's prior decision are hereby incorporated by reference.²

Appellant underwent numerous left foot surgeries. On April 25, 1990 she underwent an excision of a Morton's neuroma of the second metatarsal space of the left foot. On August 15, 1990 appellant underwent an excision of a Morton's neuroma of the third metatarsal space of the left foot, and on May 1, 1996 she underwent an excision of a stump neuroma of the third interspace of the left foot with an arthroplasty of the proximal interphalangeal (PIP) joint of the fourth and fifth digits of the left foot. On July 31, 1991 she underwent surgery on her right foot. OWCP did not accept any of the surgeries as causally related to the accepted October 10, 1985 employment injury.

In an impairment evaluation dated November 27, 2001, Dr. David Weiss, an osteopath Board-certified in family practice, diagnosed status post excision of a Morton's neuroma at the second and third metatarsal spaces of the left foot, a recurrent stump neuroma at the third interspace of the left foot, a contracture deformity of the fourth and fifth digits of the left foot, status post excision of a stump neuroma at the third interspace of the left foot, status post PIP joint arthroplasty to the fifth digit of the left foot, and an arthroplasty of the metatarsal phalangeal and PIP joint of the fifth digit of the right foot. Applying the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*), he found that appellant had a 41 percent permanent impairment of the left lower extremity due to pain and loss of motor strength in dorsiflexion and plantar flexion of the ankle.

On July 21, 2006 utilizing the fifth edition of the A.M.A., *Guides* an OWCP medical adviser opined that appellant had a 31 percent permanent impairment of the left lower extremity.³ On November 1, 2006 OWCP requested that the medical adviser clarify whether the percentage of impairment was due to the accepted work injury. In a November 12, 2006 response, the medical adviser indicated that he had provided the 31 percent impairment rating based on his review of Dr. Weiss' report and his findings regarding reduced ankle motion. He recommended a second opinion examination if there was an issue regarding the extent of any employment-related impairment rating.

On March 21, 2008 OWCP referred appellant to Dr. Jatin Ghandi, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated April 15, 2008, Dr. Ghandi diagnosed a "[l]eft ankle sprain with residual pain and weakness." He found that there was a "causal relationship between the accident mentioned above and the current medical condition...." Dr. Ghandi opined that appellant had a 31 percent permanent impairment of the left lower extremity under the fifth edition of the A.M.A., *Guides* for left ankle pain, dorsiflexion weakness, and plantar flexion weakness. In a supplemental report received on May 30, 2008, he

² Docket No. 91-1651 (issued March 5, 1992).

³ The medical adviser indicated that appellant had a permanent impairment of the right lower extremity; however, it appears that this is a typographical error.

advised that she probably reached maximum medical improvement in 2001. Dr. Ghandi again found a 31 percent left lower extremity impairment.

OWCP determined that a conflict existed between appellant's physician, Dr. Weiss, and an OWCP medical adviser and Dr. Ghandi regarding the extent of permanent impairment. On September 19, 2008 it referred her to Dr. George Glenn, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated December 1, 2008, Dr. Glenn advised that appellant had no tenderness at the sight of her surgeries but had tenderness of the second metatarsal unrelated to her October 10, 1985 work injury. He opined that her ankle sprain had resolved and that she had no impairment. Dr. Glenn found no weakness in dorsiflexion or plantar flexion, objective evidence of pain, or loss of sensation of the toes. He stated:

“[Appellant] did register complaints of pain subjectively, but demonstrated no objective evidence of tenderness over the operative areas. As a consequence of all of the above I do not feel that [she] has any residual permanency of impairment involving the left ankle which can be attributed to the accident of October 19, 1985. Regardless of the etiology, I also fail to find any residual evidence of permanency of impairment involving the left foot.”

By letter dated July 28, 2009, OWCP informed appellant that it was now using the sixth edition of the A.M.A., *Guides* for schedule awards. On January 3, 2011 it referred her to Dr. Glenn for another impartial medical examination in accordance with the sixth edition of the A.M.A., *Guides*.

In a report dated January 18, 2011, Dr. Glenn measured normal range of motion of both feet, normal circumference of the calves and ankles bilaterally, and found no ankle tenderness or tenderness of the ligamentous structures. He noted that appellant “did complain of palpable tenderness between the first and second metatarsal areas on the left with specifically no tenderness throughout the other metatarsal head or intermetatarsal areas.” Dr. Glenn found a left bunion deformity but normal findings on sensory examination with no muscle atrophy or fasciculation. He advised that his findings were predominately unchanged since the prior examination. Dr. Glenn noted that OWCP had accepted only a left ankle sprain as work related and stated, “It is quite clear based upon the prior examination and this current examination that [appellant] has no objective findings or for that matter any subjective complaints which would be consistent with that accepted diagnosis.” Citing the foot and ankle regional grid set forth at Table 16-2 on page 402 of the sixth edition of the A.M.A., *Guides*, he determined that appellant had a class 0 impairment as she did not have any “significant objective abnormal findings of muscle or tendon injury...” Dr. Glenn advised that the pain questionnaire she completed was not reliable. He opined that appellant reached maximum medical improvement no more than six months after October 10, 1985.

On August 5, 2012 an OWCP medical adviser reviewed Dr. Glenn's report and concurred with his finding that appellant had no impairment of the left lower extremity.

By decision dated October 12, 2012, OWCP denied appellant's claim for a schedule award. It found that Dr. Glenn's report as an impartial medical examiner represented the weight of the medical evidence and established that she had no impairment of the left lower extremity.

On October 22, 2012 appellant, through her attorney, requested an oral hearing before an OWCP hearing representative.

In a report dated October 12, 2012, Dr. Weiss applied the sixth edition of the A.M.A., *Guides* to his November 27, 2001 examination findings.⁴ He concluded that appellant had a six percent permanent impairment of the left lower extremity due to loss of range of motion of the great, second and third toes.

A hearing was held on January 14, 2013. At the hearing, counsel argued that Dr. Glenn was erroneously selected multiple times to serve as an impartial medical examiner. Counsel also maintained that Dr. Glenn should address causation.

By decision dated April 11, 2013, an OWCP hearing representative affirmed the October 12, 2012 decision but modified it to reflect that Dr. Glenn's opinion was that of an OWCP referral physician rather than an impartial medical examiner. He determined that at the time OWCP referred appellant to Dr. Glenn in 2008 there was no conflict in medical opinion because the 2001 report of Dr. Weiss was stale and unrationalized and thus insufficient to create a conflict. The hearing representative found that Dr. Glenn's opinion as a second opinion examiner represented the weight of the evidence and established that she had no impairment of the lower extremity. He determined that the updated report from Dr. Weiss dated October 12, 2012 was based on the 2001 examination and was thus stale. The hearing representative also found that Dr. Weiss did not address the causal relationship between his impairment rating and the accepted work injury.

In a report dated November 12, 2013, Dr. Weiss discussed appellant's history of an October 10, 1985 work injury and multiple left foot surgeries. Regarding her past medical history, he stated, "Please refer to our prior report dated November 27, 2001." On examination of the left foot, Dr. Weiss found tenderness and decreased sensation at the first through third metatarsal webs and motor strength of 4/5 in dorsiflexion and plantar flexion. He diagnosed a Morton's neuroma at the second and third metatarsal space of the left foot status post excisions, status post excision of a recurrent stump neuroma at the third interspace of the left foot, contracture deformity of the fourth and fifth left foot digits, status post arthroplasty of the PIP joint of the fifth digit of the left foot, and residual neuralgia of the first through third web spaces of the left foot. Dr. Weiss advised that appellant's October 19, 1985 employment injury and her work duties caused her subjective complaints and the objective findings. Citing the sixth edition of the A.M.A., *Guides*, he determined that appellant had a 13 percent permanent impairment of the left lower extremity due to loss of range of motion of the left first, second, and third toes at the metatarsophalangeal joints using Table 16-19 on page 549. Dr. Weiss further found a 3 percent impairment for a left superficial peroneal nerve sensory loss under Table 16-12 on page 534, which he combined with the impairment due to reduced motion to find a 16 percent left

⁴ Dr. Weiss also evaluated the extent of a right upper extremity impairment.

lower extremity impairment. He concluded that appellant reached maximum medical improvement on November 12, 2013.

On March 25, 2014 appellant's counsel requested that OWCP respond to his February 26, 2014 reconsideration request. By letter dated June 26, 2014, he submitted the February 26, 2014 reconsideration request to OWCP. Counsel argued that Dr. Weiss' November 12, 2013 report represented the weight of the evidence and established that she had a 16 percent permanent impairment of the left lower extremity.

By decision dated October 10, 2014, OWCP denied modification of its April 11, 2013 decision. It found that Dr. Weiss' opinion was insufficient to create a conflict or constitute the weight of the evidence as he did not consider appellant's medical history after November 27, 2001.

On appeal appellant's counsel argues that OWCP should have issued a schedule award for a 31 percent permanent impairment based on the agreement of the medical adviser and second opinion physician. He also contends that Dr. Glenn's opinion was not entitled to special weight as it did not contain rationale or address whether the three left foot surgeries were due to the accepted work injury. Counsel maintains that Dr. Glenn's report is stale and that he did not provide specific range of motion findings for the ankle. He argues alternatively that Dr. Weiss' report represents the weight of the evidence or that a conflict exists between Dr. Weiss and Dr. Glenn.

LEGAL PRECEDENT

The schedule award provision of FECA,⁵ and its implementing federal regulation,⁶ 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, FECA 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, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

ANALYSIS

OWCP accepted that appellant sustained a left ankle sprain on October 10, 1985 when she fell on steps. Appellant underwent multiple surgeries on her left foot for neuromas. OWCP did not authorize any of the foot surgeries or find them related to the accepted work injury.

On November 27, 2001 Dr. Weiss diagnosed status post excision of a Morton's neuroma at the left second and third metatarsal spaces, a recurrent stump neuroma at the third interspace of the left foot, a contracture deformity of the fourth and fifth digits of the left foot, status post excision of a stump neuroma at the third interspace of the left foot, status post PIP joint arthroplasty to the fifth digit of the left foot, and status post an arthroplasty of the metatarsal phalangeal, and PIP joint of the fifth digit of the right foot. He applied the fifth edition of the A.M.A., *Guides* and advised that appellant had a 41 percent permanent impairment of the left lower extremity due to loss of motor strength in plantar and dorsiflexion of the ankle and pain. OWCP, however, uses the sixth edition of the A.M.A., *Guides* to calculate schedule awards.⁹ Dr. Weiss' report was based on the fifth edition of the A.M.A., *Guides*. A medical opinion not based on the appropriate edition of the A.M.A., *Guides* is of diminished probative value in determining the extent of permanent impairment.¹⁰

An OWCP medical adviser reviewed Dr. Weiss' report and found that appellant had a 31 percent impairment of the left lower extremity. On November 21, 2006 he clarified that his impairment rating was based on Dr. Weiss' rating of ankle motion. The medical adviser recommended a second opinion examination to determine whether the impairment was employment related.

On April 15, 2008 Dr. Ghandi, an OWCP referral physician, diagnosed left ankle sprain with pain and weakness and attributed appellant's current condition to her work injury. He utilized the fifth edition of the A.M.A., *Guides* to find a 31 percent lower extremity impairment due to left ankle pain, weakness in dorsiflexion, and plantar flexion weakness. As in the case of Dr. Weiss' November 2001 report, Dr. Ghandi's opinion, however, is of little probative value as it was not based on the sixth edition of the A.M.A., *Guides*. Consequently, his report is insufficient to establish appellant's impairment rating.¹¹

OWCP determined that a conflict existed between Dr. Weiss, appellant's attending physician, and Dr. Ghandi, an OWCP referral physician, regarding the extent of any permanent impairment due to the October 10, 1985 work injury. It referred her to Dr. Glenn, a Board-certified orthopedic surgeon, for an impartial medical examination. Based on Dr. Glenn's report, OWCP denied appellant's schedule award claim. An OWCP hearing representative subsequently determined that there was no conflict at the time OWCP referred her to Dr. Glenn as Dr. Weiss' report was stale and thus of little probative value. He found, however, that

⁹ *Id.*

¹⁰ See *F.T.*, Docket No. 14-553 (issued August 11, 2014); *Fritz A. Klein*, 53 ECAB 642 (2002).

¹¹ See *C.J.*, Docket No. 13-1959 (issued February 6, 2014); *J.H.*, Docket No. 13-732 (issued July 5, 2013).

Dr. Glenn's opinion constituted the weight of the evidence as a referral physician and established that appellant had no left lower extremity impairment.

The Board finds that Dr. Glenn's opinion as an OWCP referral physician constitutes the weight of the medical opinion evidence and establishes that appellant has no permanent impairment. In a report dated December 1, 2008, Dr. Glenn utilized the fifth edition of the A.M.A., *Guides* and determined that she had no left ankle impairment as a result of her accepted ankle sprain. On January 18, 2011 Dr. Glenn opined that appellant had a normal sensory examination with no atrophy or loss of motion. He found no objective findings of an ankle sprain. Applying Table 16-2 on page 402 of the sixth edition of the A.M.A., *Guides*, Dr. Glenn advised that appellant had a class 0 impairment based on her lack of objective findings of an injury to a muscle or tendon. On August 5, 2012 an OWCP medical adviser reviewed and agreed with Dr. Glenn's conclusions. The Board finds that Dr. Glenn's opinion was based on an appropriate factual and medical history and was sufficiently well rationalized to constitute the weight of the medical opinion evidence on the issue of appellant's lower extremity impairment. Dr. Glenn provided rationale for his opinion by explaining that, based on his findings on two examinations and her subjective complaints, appellant had no residuals or impairment as a result of the accepted condition of left ankle sprain. His detailed opinion represents the weight of the evidence and establishes that appellant is not entitled to a schedule award.¹²

The remaining evidence is insufficient to establish that appellant sustained a permanent impairment of the lower extremities. Appellant requested reconsideration and submitted a November 12, 2013 report from Dr. Weiss, who provided current findings on examination. Referencing the sixth edition of the A.M.A., *Guides*, Dr. Weiss opined that she had a 13 percent permanent impairment due to loss of range of motion of the toes using Table 16-19 on page 549. He further found a 3 percent impairment due to sensory loss of the left superficial peroneal nerve under Table 16-12 on page 534, for a combined left lower extremity impairment of 16 percent. Dr. Weiss, however, referred to his November 27, 2001 report for prior medical history, and thus his report is based on an incomplete medical history as he did not discuss or review appellant's medical history subsequent to 2001. Medical reports based on an inaccurate or incomplete history of injury are of little probative value.¹³ Additionally, Dr. Weiss rated appellant for conditions not accepted by OWCP as employment related. It is appellant's burden to establish that she sustained a permanent impairment of a scheduled member as a result of an employment injury through the submission of rationalized medical evidence.¹⁴ While Dr. Weiss generally found that appellant's October 1985 work injury caused the objective findings, he did not provide any rationale for his opinion.¹⁵ Such rationale is particularly necessary given the

¹² See *D.W.*, Docket No. 13-278 (issued April 15, 2013); *J.L.*, Docket No. 09-1726 (issued June 8, 2010).

¹³ See *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁴ See *R.J.*, Docket No. 14-1950 (issued March 23, 2015); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹⁵ Medical conclusions unsupported by rationale are of diminished probative value. See *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

numerous medical procedures appellant has undergone on her left foot that have not been accepted by OWCP as employment related.

On appeal appellant's counsel argues that OWCP should have issued a schedule award for a 31 percent permanent impairment based on the agreement of the medical adviser and second opinion physician. However, OWCP medical adviser found that OWCP should develop the evidence to determine whether the 31 percent impairment rating resulted from the accepted work injury. Further, the rating by Dr. Ghandi was based on the fifth edition of the A.M.A., *Guides*, and thus is not probative to the issue of the extent of any permanent impairment under the sixth edition of the A.M.A., *Guides*.

Counsel also contends that Dr. Glenn's opinion was not entitled to the weight of the evidence as he did not provide rationale or address whether the three left foot surgeries were due to the accepted work injury. OWCP, however, did not authorize the ankle surgeries. As discussed, it is appellant's burden to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.¹⁶

Counsel additionally argues that Dr. Glenn did not provide specific range of motion findings for the ankle. Dr. Glenn found, however, that appellant had no loss of motion for dorsiflexion, plantar flexion, eversion, and inversion. He clearly found that she had no impairment due to loss of motion. Counsel further contends that Dr. Glenn's report is stale; however, he provided an impairment rating based on current findings in January 2011 at which time he found that appellant had no objective findings of the accepted work injury.

Counsel maintains that either Dr. Weiss' report represents the weight of the evidence or a conflict exists between Dr. Weiss and Dr. Glenn. As discussed, however, Dr. Weiss' report is of reduced probative value as he did not rely on a complete medical history or support his causation finding with medical rationale. Instead, he rated appellant for loss of range of motion of the toes and sensory loss of the peroneal nerve, conditions not accepted as work related. A schedule award can only be paid for a condition related to an employment injury.¹⁷ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to her employment.¹⁸ Dr. Weiss' rating is not based on the accepted condition and is thus of little probative value.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not established a permanent impairment of the left lower extremity.

¹⁶ *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

¹⁷ *See J.S.*, Docket No. 13-2132 (issued July 23, 2014).

¹⁸ *See Veronica Williams*, 56 ECAB 367 (2005).

ORDER

IT IS HEREBY ORDERED THAT the October 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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