



purchase of orthopedic work boots.<sup>2</sup> In a June 3, 1996 order, the Board dismissed appellant's appeal for lack of jurisdiction.<sup>3</sup> By decision dated February 16, 2005, the Board found that the case was not in posture for decision with respect to a schedule award determination and set aside an Office decision dated March 18, 2004 that denied modification of its November 26, 2002 schedule award. The Board remanded the case to the Office for an Office medical adviser to review the March 7, 2002 opinion of Dr. Frank A. Graf, a Board-certified orthopedic surgeon, who had provided an impartial evaluation for the Office.<sup>4</sup> On December 20, 2005 the Board found that Dr. Graf's report established that appellant had a total 62 percent impairment to his lower extremities and remanded the case to the Office for an additional schedule award.<sup>5</sup> By decision dated January 22, 2007, the Board found that appellant was entitled to a 62 percent total impairment for each lower extremity and remanded the case to the Office for an additional schedule award.<sup>6</sup> The law and the facts of the previous Board decisions are incorporated herein by reference. Subsequent to the Board's January 22, 2007 decision, on February 22, 2007 the Office granted appellant a schedule award for an additional 24 percent impairment.

### **LEGAL PRECEDENT**

Under section 8107 of the Federal Employees' Compensation Act<sup>7</sup> and section 10.404 of the implementing federal regulations,<sup>8</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),<sup>9</sup> has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>10</sup>

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November 26, 2002 he was granted a schedule award for a 16 percent impairment on the right and a 14 percent impairment on the left. On March 29, 2005 he was granted a schedule award for an additional eight percent and on March 1, 2006 a schedule award for an additional 24 percent.

<sup>2</sup> Docket No. 93-205 (issued December 23, 1993).

<sup>3</sup> Docket No. 94-1140 (issued June 3, 1996).

<sup>4</sup> 56 ECAB 341 (2005).

<sup>5</sup> Docket No. 05-1382 (issued December 20, 2005).

<sup>6</sup> Docket No. 06-937 (issued January 22, 2007).

<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

<sup>10</sup> See *Joseph Lawrence, Jr., id.*; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

Although the A.M.A., *Guides* include guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under the Act for injury to the spine.<sup>11</sup> In 1960, amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. Therefore, as the schedule award provisions of the Act include the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.<sup>12</sup> An impairment should not be considered permanent until the clinical findings indicate that the medical condition is static and well stabilized.<sup>13</sup>

### ANALYSIS

The Board finds that appellant is entitled to an additional 18 percent impairment of the right lower extremity and an additional 20 percent impairment of the left lower extremity, to total a 62 percent impairment for each. A review of the schedule awards appellant has received in the past shows that on November 26, 2002 he was granted schedule awards for a 16 percent right lower extremity impairment and a 14 percent impairment on the left. On March 29, 2005 he was granted a schedule award for an additional eight percent (or four percent on each side). On March 1, 2006 he was granted a schedule award for an additional 24 percent (or 12 percent on each side), and on February 22, 2007 for an additional 24 percent (or 12 percent on each side). Appellant has therefore received schedule awards totaling 44 percent on the right and 42 percent on the left.<sup>14</sup> As the Board has found previously,<sup>15</sup> the medical evidence, as characterized by the referee opinion of Dr. Graf, establishes that appellant is entitled to schedule awards for a 62 percent impairment for each lower extremity. He is therefore entitled to an additional 18 percent impairment on the right and an additional 20 percent impairment on the left. The case must be remanded for the Office to issue additional schedule awards.

### CONCLUSION

The Board finds that appellant is entitled to a 62 percent impairment for each lower extremity.

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<sup>11</sup> *Pamela J. Darling*, 49 ECAB 286 (1998).

<sup>12</sup> *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>13</sup> *Patricia J. Penney-Guzman*, 55 ECAB 757 (2004).

<sup>14</sup> *Supra* note 1.

<sup>15</sup> *Supra* notes 5 and 6.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 22, 2007 be vacated and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: July 11, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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