

In a November 25, 2005 letter, the district medical adviser noted that appellant needed to be assessed by a physician using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fifth edition, in order to make a decision regarding an impairment rating.

On December 1, 2005 the Office referred appellant to Dr. Anthony Margherita, Board-certified in physical medicine and rehabilitation, for a second opinion examination. In a December 28, 2005 report, Dr. Margherita opined that appellant was eligible for an impairment rating due to his employment injury but that he did not believe that appellant had reached maximum medical improvement and required further treatment of his condition.

In a February 18, 2006 report, the district medical adviser noted that, if appellant did not proceed with hammer toe surgery, he should be examined by a physician skilled in the use of the A.M.A., *Guides*.

On August 9, 2006 the Office referred appellant to Dr. John Gragnani, Board-certified in occupational medicine and physical medicine and rehabilitation, for a second opinion examination.

In an August 24, 2006 report, Dr. Gragnani measured the range of motion of the toes under Table 17-14, page 537 of the A.M.A., *Guides*. The metatarsophalangeal joint extension for the large toe was 35 degrees and that the interphalangeal (IP) joint was measured at 20 degrees of flexion. The second and third toes measured extension of 15 degrees, and the fourth and fifth toes measured extension of 10 degrees. Dr. Gragnani found the sensory examination to be normal and the date of maximum medical improvement to be September 7, 2005. He also found that there was no ankylosis therefore Table 17-30 was not used. Dr. Gragnani concluded that the ranges of toe motion did not reveal any abnormality; therefore, no impairment rating was given. The district medical adviser reviewed Dr. Gragnani's report and agreed with his findings.

On October 4, 2006 the Office denied appellant's schedule award claim finding that the medical evidence did not demonstrate any permanent impairment of the left lower extremity.

On October 16, 2006 appellant requested a telephonic oral hearing. The hearing was held on June 1, 2007.

In a June 20, 2007 decision, the Branch of Hearings and Review denied appellant's schedule award claim finding that appellant was properly referred for a second opinion examiner and that the medical evidence did not establish any permanent impairment to the toes of his left foot.

On July 20, 2007 appellant requested reconsideration. He submitted handwritten notes in support.

In an August 22, 2007 nonmerit decision, the Office denied appellant's request for reconsideration finding that he did not submit new and relevant evidence to support his claim.

On October 5, 2007 appellant requested reconsideration. In a September 10, 2007 letter, Dr. Gary Farley reported that appellant still experienced problems with his toes. He noted tenderness over the toes with numbness in the third and fourth toes. Dr. Farley diagnosed

synovitis of the metatarsophalangeal joints of the second and third toes on the left foot and Morton's neuroma of the second and third, third and fourth interspaces of his left foot and opined that appellant's condition was related to the March 29, 2005 injury. A September 25, 2007 medical report stated that appellant had pain in the metatarsal region of his foot and that he was given injections. In an October 9, 2007 report, Dr. Farley reported that appellant had relief with the injections and had reached maximum medical improvement.

In a November 30, 2007 merit decision, the Office denied appellant's schedule award claim. It found that Dr. Farley's reports did not establish that appellant sustained any permanent impairment of the left lower extremity in accordance with the A.M.A., *Guides*.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² 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. The Act, however, does not specify the manner in which the percentage of loss shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of the Office.³ 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 regulation as the appropriate standard for evaluating schedule losses.⁴ Effective February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁵

ANALYSIS

Appellant's claim was accepted by the Office for fracture of several toes of the left foot. On November 15, 2005 he filed a claim for a schedule award. In a September 7, 2005 report, Dr. Farley, an attending physician, opined that he had reached maximum medical improvement and had 10 percent impairment to the left lower extremity. Appellant was then sent for a second opinion examination with Dr. Gragnani on August 24, 2006.

Dr. Gragnani measured the range of motion of the toes as set forth at Table 17-14, page 537 of the A.M.A., *Guides*. He found metatarsophalangeal joint extension of the large toe of 35 degrees and IP joint flexion was measured as 20 degrees. The second and third toes revealed

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.404.

³ *Michele Tousley*, 57 ECAB 130 (2005); *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781, 783-84 (1986).

⁴ *Michele Tousley*, *supra* note 3; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁵ *Dennis R. Stark*, 57 ECAB 306 (2006).

extension of 15 degrees, and the fourth and fifth toes had extension of 10 degrees. Dr. Gragnani noted that he did not consult Table 17-30 as there was no diagnosis of ankylosis.

The Board finds that the Office medical adviser properly evaluated appellant's permanent impairment. According to Table 17-14, metatarsophalangeal extension of the great toe greater than 30 degrees represents zero percent impairment of the lower extremity and metatarsophalangeal extension of the lesser toes 10 degrees or greater represents zero percent impairment. Interphalangeal flexion of the great toe of 20 degrees or greater also represents a zero percent impairment. The district medical adviser properly determined that appellant did not have a ratable permanent impairment based on loss of range of motion of the toes.

Two other reports from Dr. Farley dated September 10 and October 9, 2007 were submitted. However Dr. Farley did not provide any impairment rating based on the A.M.A., *Guides*. As noted, the A.M.A., *Guides* have been adopted as the appropriate standard for evaluating schedule losses.⁶ The reports of Dr. Farley are not probative as to the issue of impairment to appellant's toes caused by the accepted injury.

The Board finds that the Office medical adviser's opinion represents the weight of the medical evidence in this case. It is sufficiently rationalized and based upon the appropriate criteria as set forth in the A.M.A., *Guides*.

CONCLUSION

The Board finds that appellant has not established that he sustained any permanent impairment of the left lower extremity due to the accepted left toe fractures.

⁶ *Billy B. Scoles*, 57 ECAB 258 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 30, 2007 is affirmed

Issued: July 9, 2008
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