United States Department of Labor
Employees' Compensation Appeals Board

L.K., Appellant	)	
and	)	**Docket No. 10-1581**
	)	**Issued: April 1, 2011**
DEPARTMENT OF THE ARMY, OAKLAND ARMY BASE, Oakland, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 24, 2010 appellant filed a timely appeal from an April 30, 2010 merit decision of the Office of Workers' Compensation Programs regarding a schedule award claim. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that she sustained more than a 36 percent permanent impairment of the left foot, for which she received a schedule award.

On appeal, appellant asserted that a second opinion physician found that her accepted conditions had not resolved.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

The Office accepted that on May 12, 1989 appellant, then a 37-year-old family child care clerk, sustained a fracture of the fifth metatarsal of the left foot and a sprain of the calcaneofibular ligament of the left ankle when she stepped off a curb and twisted her ankle. Appellant was followed by Dr. Henry M. Daniels, an attending Board-certified orthopedic surgeon, who advised that she reached maximum medical improvement as of December 8, 1990, with residual chronic fibromyalgia and arthralgia of the left foot and ankle with osteoarthritis of the talonavicular joint.

The Office determined that appellant was entitled to a schedule award. In an August 23, 1990 report, an Office medical adviser reviewed Dr. Daniels' reports and found the following impairments in the left lower extremity: six percent due to moderate impairment to the tibial and medial calcaneal nerves; one percent for impairment of the deep peroneal nerve; seven percent for dorsiflexion of the left ankle limited to 0 degrees; five percent for plantar flexion limited to 25 degrees; three percent for left ankle eversion limited to 5 degrees; and four percent for left ankle inversion limited to 4 degrees. He combined the impairments to equal a 36 percent impairment of the left foot or 25 percent impairment of the left lower extremity.

By decision dated April 17, 1991, the Office granted appellant a schedule award for a 36 percent impairment of the left foot. The period of the award ran from December 8, 1990 to May 7, 1992.[2]

Appellant remained under medical care. In a January 10, 1996 report, Dr. Andrew B. Wallach, an attending orthopedic surgeon, found no residuals of the May 12, 1989 injury. Dr. Noel Silan, an attending podiatrist, treated appellant for left ankle pain and tarsal tunnel syndrome in 1999 and 2000. In reports from February 2002 to December 2004, Dr. Jack H. Stehr, an attending Board-certified orthopedic surgeon, diagnosed chronic left foot pain. Beginning in November 2006, appellant was followed by Dr. Edward R. Cohen, a podiatrist, who diagnosed plantar fasciitis, tarsal tunnel syndrome and left ankle instability. On December 18, 2009 Dr. Cohen requested that the Office authorize plantar fasciitis surgery on appellant's left heel.[3]

On September 7, 2009 appellant claimed an additional schedule award. The Office then obtained a second opinion from Dr. Kenneth N. Adatto, a Board-certified orthopedic surgeon. A copy of the medical record and statement of accepted facts were provided for his review. In a December 14, 2009 report, Dr. Adatto observed moderate swelling of the left ankle and foot, and restricted range of left ankle motion. He obtained x-rays showing osteophyte formation on the plantar surface of the left ankle joint. Dr. Adatto diagnosed a left calcaneal spur and sprains/strains of the left foot and ankle. He opined that appellant had reached maximum medical improvement on December 8, 1990, with residuals of weak calcaneofibular ligaments predisposing her to tarsal tunnel syndrome and tenosynovitis. Referring to Figure 16-2, page 498

[2] On its face, the April 17, 1991 decision refers to the right foot instead of the left. The Board finds that this is a nondispositive typographical error.

[3] There is no decision of record regarding Dr. Cohen's surgical request.

of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, "A.M.A., *Guides*"),[4] Dr. Adatto found a three percent impairment of the left lower extremity due to a calcaneal spur and a three percent impairment of the left lower extremity due to an ankle sprain/strain.

The Office requested that an Office medical adviser review the medical record and provide an impairment rating according to the sixth edition of the A.M.A., *Guides*. In a January 27, 2010 report, the Office medical adviser reviewed the record and concurred that appellant had reached maximum medical improvement as of December 8, 1990. He opined that she had a one percent impairment of the left leg due to clinical instability of the left ankle according to Table 16-2, page 502[5] of the sixth edition of the A.M.A., *Guides*. The Office medical adviser found a Class I or mild impairment with a default grade of C. He noted a CDX (impairment class for the diagnosed condition) of one, a GMFH (grade modifier based on functional history) of two, a GMPE (grade modifier for physical examination) of one and a GMCS (grade modifier for clinical studies) of zero. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), equaling (2-1) + (1-1) + (0-1) or 1 + 0 + -1, the Office medical adviser found a grade modifier of zero. He concluded that appellant had a one percent impairment of the left lower extremity. In a March 22, 2010 addendum, the medical adviser found that she was not entitled to an additional schedule award as she did not have more than the 36 percent impairment of the left foot previously awarded.

By decision dated April 30, 2010, the Office denied appellant's claim for an increased schedule award as the medical evidence did not establish impairment greater than the 36 percent previously awarded. It found that both Dr. Adatto and the Office medical adviser opined that appellant did not have more than a 36 percent impairment of the left foot.

LEGAL PRECEDENT

The schedule award provisions of the Act[6] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a mater which rests in the sound discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized 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 Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[7] For schedule awards after May 1,

[4] Figure 16-2, page 498 of the sixth edition of the A.M.A., *Guides* is entitled "Lower Extremity Evaluation Record."

[5] Table 16-2, page 502 of the sixth edition of the A.M.A., *Guides* is entitled "Foot and Ankle Regional Grid -- Lower Extremity Impairments."

[6] 5 U.S.C. §§ 8101-8193.

[7] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.[8]

The sixth edition of the A.M.A., *Guides* provide a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[9] Under the sixth edition of the A.M.A., *Guides* the evaluator identifies the most relevant 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).[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

ANALYSIS

The Office accepted that appellant sustained a fracture of the fifth metatarsal of the left foot and a sprain of the calcaneofibular ligament of the left ankle. On April 17, 1991 appellant received a schedule award for a 36 percent impairment of the left foot. She claimed an additional schedule award on September 7, 2009.

The Office obtained a second opinion from Dr. Adatto, a Board-certified orthopedic surgeon, who found a six percent impairment of the left lower extremity due to a heel spur and ankle sprain/strain. An Office medical adviser opined that appellant had only a one percent impairment of the left foot due to instability of the left ankle. He opined that she was not entitled to an additional schedule award as the medical evidence did not support an increased percentage of left foot impairment above the 36 percent awarded on April 17, 1991. By April 30, 2010 decision, the Office denied appellant's claim for an additional schedule award.

The Board finds that the Office medical adviser applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Adatto's clinical findings. The Office medical adviser used the grade modifier adjustment formula to determine that the diagnosis-based percentage did not require modification. The Board notes that his mathematical calculations were correct. Also, there is no medical evidence of record utilizing the appropriate elements of the sixth edition of the A.M.A., *Guides* demonstrating a greater percentage of permanent impairment. Therefore, the Office properly relied on the Office medical adviser's assessment of a one percent impairment of the left foot.

On appeal, appellant asserted that Dr. Adatto opined that the accepted injuries had not resolved. As stated, Dr. Adatto found a left ankle sprain/strain. However, both Dr. Adatto and the Office medical adviser found that the ankle sprain or instability did not establish a greater percentage of impairment than previously awarded. Therefore, the evidence does not establish entitlement to an additional schedule award.

[8] FECA Bulletin 09-03 (issued March 15, 2009).

[9] A.M.A., *Guides* (6th ed. 2008), page 3, Section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[10] *Id*. at pp. 494-531.

CONCLUSION

The Board finds that appellant has not established that she sustained more than a 36 percent impairment of the left foot, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 30, 2010 is affirmed.

Issued: April 1, 2011
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