

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

E.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York City, NY, Employer**

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**Docket No. 11-1755
Issued: May 1, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 26, 2011 appellant filed a timely appeal from a January 25, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding her schedule award claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has more than two percent impairment of the left leg, for which she received a schedule award.

FACTUAL HISTORY

On April 12, 2005 appellant, then a 62-year-old administrative clerk, filed an occupational disease claim for left heel pain caused by walking at work. OWCP accepted left plantar fasciitis and authorized an endoscopic plantar fasciotomy, which she underwent

¹ 5 U.S.C. §§ 8101-8193.

on May 1, 2007. After a period of time off work, appellant retired. OWCP subsequently accepted a consequential right plantar fasciitis condition.

On October 10, 2008 appellant filed a claim for a schedule award. In a December 10, 2008 letter, OWCP advised her of the medical information needed for a schedule award. No responsive medical evidence was received.

By decision dated January 30, 2009, OWCP denied the schedule award claim finding that appellant had not submitted any medical evidence to establish permanent impairment as a result of the work-related condition.

Following this decision, OWCP received several reports from Dr. Eric Walter, a podiatrist. In a January 15, 2009 report, Dr. Walter discussed the mechanism of injury, appellant's treatment and presented findings on examination. He concluded that she reached maximum medical improvement on September 2008 when she was 60 percent recovered from the initial pain. Dr. Walter noted that appellant continued to experience nerve root pain with no weakness or atrophy, full movement and a slight limp. He stated that she had five percent permanent impairment.

On February 12, 2009 appellant disagreed with OWCP's January 30, 2009 decision and requested a review of the written record by an OWCP hearing representative. By decision dated May 6, 2009, the hearing representative set aside the January 30, 2009 decision finding that Dr. Walter's January 15, 2009 report required further medical development.

In a June 29, 2009 letter, OWCP requested that Dr. Walter submit additional medical documentation in support of appellant's schedule award claim using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In a July 15, 2009 response, Dr. Walter opined that her right heel pain was related to her left heel pain. Appellant favored her left heel and placed pressure on the right heel, which over time led to decreased mechanical control of the foot and increased pain in the right heel. Dr. Walter did not rate permanent impairment to her left lower extremity.

In an August 23, 2009 report, an OWCP medical adviser reviewed the medical record. He noted that Dr. Walter failed to provide any impairment determination under the A.M.A., *Guides* or provide sufficient information so impairment could be calculated.

On November 3, 2009 OWCP referred appellant, together with the medical record, a list of questions and a statement of accepted facts to, Dr. Stanley Soren, a Board-certified orthopedic surgeon, for a second opinion examination. In a November 13, 2009 report, Dr. Soren reviewed the history of injury, the medical records and presented examination findings. He diagnosed plantar fasciitis of the left foot; status post endoscopic plantar fasciotomy. Dr. Soren felt that appellant reached maximum medical improvement, although it was difficult to determine exactly when it occurred. He stated an approximate date would be around June 2009 when Dr. Walter mentioned her right foot became symptomatic and was worse than the left foot. Dr. Soren also noted that appellant was a diabetic. In a December 8, 2009 report, he opined that she had 13 percent impairment of the left leg under the sixth edition of the A.M.A., *Guides*. Dr. Soren noted that left foot range of motion was normal. But, under Table 16-2, page 501, he opined that

appellant had plantar fasciitis with an impairment range of 1 to 13 percent. Under Table 16-6, page 516 Dr. Soren opined that she had grade modifier Functional History (GMFH) of 2; under Table 16-7, page 517, appellant had grade modifier Physical Examination (GMPE) of 2; and under Table 16-8, page 519, appellant had grade modifier Clinical Studies (GMCS) of 2. Under the net modifier adjustment formula $(GMFH - CDX) (2-1) + (GMPE - CDX) (2-1) + (GMCS - CDX) (2-1)$ a +3 net modifier adjustment was found. Accordingly, Dr. Soren found that appellant had 13 percent left leg impairment.

In a February 24, 2010 report, an OWCP medical adviser reviewed Dr. Soren's reports and noted that Dr. Soren did not list a default value for class 1 plantar fasciitis and provided no rationale for his impairment determination. He stated that Dr. Soren picked the upper end of the impairment range for numerous diagnoses under the class 1 heading but this was not correct for the plantar fasciitis diagnosis. The medical adviser stated that the diagnosis of planar fasciitis should have been chosen with a default value of class 1, which when adjusted moved to two percent or the E value of the highest possible value for plantar fasciitis. He further stated that the date of maximum improvement could either be July 15, 2009, the date of Dr. Walter's examination or June 2009, the date Dr. Soren choose.

On May 11, 2010 OWCP requested Dr. Soren to clarify his impairment rating. In a June 23, 2010 report, Dr. Soren agreed that the default value for a class 1 plantar fasciitis was one percent under Table 16-2, page 501. He stated that, as his net modifier adjustment of 3 moved the default value to the right or to the E value, appellant had two percent impairment of her left leg.

In a July 21, 2010 report, an OWCP medical adviser stated that Dr. Soren correctly rated two percent impairment for appellant's left leg. In a December 13, 2010 report, the medical adviser opined that the date of maximum medical improvement was November 13, 2009, the date of Dr. Soren's examination.

By decision dated January 25, 2011, OWCP granted appellant a schedule award for two percent impairment to the left leg. The award covered 5.76 weeks of compensation for the period November 13 to December 23, 2009.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations² 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. It, 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 OWCP.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 regulations as the

² 20 C.F.R. § 10.404.

³ *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

appropriate standard for evaluating schedule losses.⁴ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁵

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.⁶ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁷

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.⁸

ANALYSIS

OWCP accepted that appellant sustained a left plantar fasciitis, for which she underwent an authorized endoscopic plantar fasciotomy on May 1, 2007.⁹ Appellant subsequently filed a claim for a schedule award. By decision dated January 25, 2011, OWCP granted two percent permanent impairment to the left lower extremity.

In his January 15, 2009 report, Dr. Walter opined that appellant had five percent permanent impairment. However, he did not indicate what edition of the A.M.A., *Guides* the impairment rating was based on or provide any rationale or calculations for his impairment rating. No other reports from Dr. Walter contained an impairment rating for which an impairment rating under the sixth edition of the A.M.A., *Guides* could be calculated. Thus, his reports are of limited probative value to obtain an impairment rating.¹⁰

Dr. Soren submitted three reports, November 13 and December 8, 2009 and June 23, 2010. In his November 13, 2009 report, he set forth his examination findings. In his December 8, 2009 report, Dr. Soren initially opined that appellant had 13 percent left leg impairment.¹¹ OWCP referred the matter to an OWCP medical adviser who opined that

⁴ Ronald R. Kraynak, 53 ECAB 130 (2001).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁶ A.M.A., *Guides* 494-531.

⁷ *Id.* at 521.

⁸ Federal (FECA) Procedure Manual, *supra* note 5 at Chapter 2.808.6(d) (August 2002).

⁹ While OWCP subsequently accepted a consequential right plantar fasciitis, this schedule award only concerns the accepted left plantar fasciitis condition.

¹⁰ See *Shalanya Ellison*, 56 ECAB 150, 154 (2004) (schedule awards under FECA are to be based on the A.M.A., *Guides*; an estimate of permanent impairment is irrelevant and not probative where it is not based on the A.M.A., *Guides*).

¹¹ Dr. Soren apparently mistakenly chose 13 percent impairment as this was the maximum impairment allowed for any class one diagnosis in Table 16-2 page 501-08 of the A.M.A., *Guides*. However, the actual range of impairment for the applicable diagnosis of plantar fasciitis is zero to two percent. A.M.A., *Guides* at 501.

Dr. Soren had utilized the improper default value. Subsequently, Dr. Soren found in his June 23, 2010 report that the correct application of the A.M.A., *Guides* resulted in two percent left leg impairment. Under Table 16-2, page 501 of the A.M.A., *Guides* a class 1 plantar fasciitis has one percent default value for the c level. Dr. Soren found under Table 16-6, page 516 appellant had GMFH of 2; under Table 16-7, page 517, appellant had GMPE of 2; and under Table 16-8, page 519, appellant had GMCS of 2. Using the net modifier adjustment formula $(GMFH - CDX) (2-1) + (GMPE - CDX) (2-1) + (GMCS - CDX) (2-1)$, he found a +3 adjustment. In his June 23, 2010 report, Dr. Soren acknowledged that a net adjustment of 3 would move the default value of a class 1 to the right to grade E for a maximum of two percent of the left lower extremity. The Board finds that Dr. Soren's final impairment of two percent of the left lower extremity conforms to the proper application of the A.M.A., *Guides*. On July 21, 2010 an OWCP medical adviser reviewed the medical evidence and opined that Dr. Soren properly calculated appellant's impairment at two percent for the left leg.

The record does not contain any other report that evaluates appellant's left lower extremity impairment under the sixth edition of the A.M.A., *Guides*. Appellant has not submitted evidence showing that she has more than a two percent permanent impairment of her left leg.

On appeal, appellant states that she believes the two percent schedule award is incorrect and asserted that she has never received any compensation for her injury. As noted, the medical evidence of record does not establish greater impairment than two percent of the left leg. The Board notes that amount payable pursuant to a schedule award does not take into account the effect that the impairment has on employment opportunities, wage-earning capacity or lifestyle activities.¹² Appellant may request an 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 no more than two percent permanent impairment of the left lower extremity, for which she received a schedule award.

¹² Denise L. Crouch, 57 ECAB 161 (2005).

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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