



## **FACTUAL HISTORY**

This case has previously been before the Board. By decision dated November 12, 2010, the Board set aside a January 21, 2010 decision granting appellant a schedule award for a three percent impairment of each lower extremity.<sup>2</sup> The Board found that appellant's attending physicians did not provide a full impairment evaluation and that OWCP's medical adviser did not provide a diagnosis, class rating or grade modifiers in determining the impairment of the right lower extremity using the diagnosis-based evaluation method. The Board determined that he did not identify the evidence he relied upon in finding a three percent left lower extremity impairment due to L4-5 radiculopathy. The Board remanded the case for the proper application of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). The facts and circumstances as set forth in the prior decision are hereby incorporated by reference.

On December 13, 2010 an OWCP medical adviser found that appellant had a 10 percent right lower extremity rating due to her ankle fracture according to Table 16-2 on page 503 of the A.M.A., *Guides*. He opined that she had a default Grade C impairment due to the findings on examination of decreased eversion and inversion and her functional history. OWCP's medical adviser also determined that appellant had a four percent impairment of the left lower extremity due to Grade C sciatic radiculopathy according to Table 16-12 on page 535 of the A.M.A., *Guides*. He found no adjustment for functional history or findings on examination.

By decision dated February 16, 2011, OWCP granted appellant schedule awards for a 10 percent right lower extremity impairment and a 4 percent left lower extremity impairment, less the 3 percent previously paid on each side. The period of the awards ran for 23.04 weeks from February 20 to July 31, 2010.

On appeal appellant maintains that she experiences pain in her leg, ankle, head and back due to her work injury and cannot wear high heels. She is also restricted in activities such as walking and shopping.

## **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>3</sup> and its implementing federal regulations,<sup>4</sup> 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,

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<sup>2</sup> Docket No. 10-850 (issued November 12, 2010). OWCP accepted that on March 24, 2008 appellant, then a 45-year-old food service worker, sustained a closed bimalleolar right ankle fracture and authorized an open reduction and internal fixation of the fracture. It further accepted that she sustained an L4-5 annular tear and lumbar radiculopathy.

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

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.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup>

The sixth edition requires identifying the 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).<sup>7</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

### ANALYSIS

OWCP accepted appellant's claim for a bimalleolar fracture of the right ankle, lumbar radiculopathy and an annular tear at L4-5. On prior appeal, the Board found that appellant's attending physicians had not provided impairment evaluations and that OWCP's medical adviser did not adequately explain her right lower extremity rating under the sixth edition of the A.M.A., *Guides*. The Board determined that the evidence was insufficient to establish whether appellant had a permanent impairment of the left lower extremity impairment due to her accepted work injury.

On remand, an OWCP medical adviser applied Table 16-2 on page 503 of the A.M.A., *Guides* and concluded that appellant had a 10 percent impairment, or Grade C, for an ankle fracture with loss of motion. He did not, however, specifically apply the grade modifiers or the net adjustment formula but instead found that she had the default impairment rating of 10 percent for a bimalleolar ankle fracture with a mild motion deficit or mild malalignment. The Board thus finds that OWCP's medical adviser's report is insufficient to establish the extent of appellant's impairment of the right lower extremity.

OWCP's medical adviser further found that appellant had a four percent impairment of the left lower extremity due to Grade C sciatic radiculopathy according to Table 16-12, relevant to determining impairments due to peripheral nerve injuries. He found no adjustment based on the functional history and findings on examination. As noted by the Board on prior appeal, however, the sixth edition of the A.M.A., *Guides* provides a specific methodology for rating spinal nerve extremity impairment.<sup>8</sup> It was designed to be used when a particular jurisdiction

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<sup>5</sup> *Id.* at § 10.404(a).

<sup>6</sup> 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).

<sup>7</sup> A.M.A., *Guides* 494-531.

<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

mandated ratings for extremities and precluded ratings for the spine.<sup>9</sup> OWCP's medical adviser based his four percent left lower extremity rating on Table 16-12, Peripheral Nerve Impairment, which is not the preferred method adopted by OWCP for rating the lower extremities due to a spinal nerve impairment. Furthermore, he did not, as instructed by the Board, identify the findings relied upon in finding a left lower extremity impairment due to a spinal nerve root injury.

The Board will, consequently, remand the case for OWCP to obtain an opinion regarding the extent of appellant's right and left lower extremity impairment consistent with the A.M.A., *Guides*.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 16, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: December 1, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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

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<sup>9</sup> *Id.*