

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

F.I., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Garfield Heights, OH, Employer**

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**Docket No. 10-1668
Issued: July 6, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 11, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) May 27, 2010 schedule award decision. 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 this case.

ISSUE

The issue is whether appellant has more than a six percent impairment of his left lower extremity, for which he received a schedule award.

FACTUAL HISTORY

On August 12, 1997 appellant, then a 40-year-old custodian filed a traumatic injury claim alleging that on that date he was squatting down to pick up the mop wringer when he injured his

¹ 5 U.S.C. § 8101 *et seq.*

lower back and hip in the performance of duty. He did not initially stop work.² OWCP accepted the claim for acute lumbosacral strain.³ It expanded the claim to include a herniated disc bulge at L4-5 with radiculopathy. Appellant received appropriate compensation benefits.⁴

On June 2, 2007 appellant filed a claim for a schedule award and submitted medical evidence. On July 31, 2008 OWCP granted him a schedule award for six percent permanent impairment of the left leg due to motor and sensory deficit. The award covered a period of 17.28 weeks from May 15 to September 12, 2008.

On November 25, 2009 appellant filed a claim for a schedule award. In a letter also dated November 25, 2009, he requested that he be examined for a schedule award.⁵ On February 24, 2010 OWCP referred appellant for a second opinion, along with a statement of accepted facts, a set of questions and the medical record to Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon.

In a report dated March 22, 2010, Dr. Ghanma noted appellant's history and utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6th ed. 2009) (*hereinafter*, A.M.A., *Guides*). Examination findings included no spinal listing, no abnormal curvature, no scarring, no discoloration, no swelling, and no temperature increase or decrease. Appellant's thighs and calves were equal in maximum circumference. He complained of decreased right lateral leg sensation and decreased right first web and right medial foot sensation. Appellant had 90 degrees of seated straight leg raising bilaterally, and 30 degrees each of right and left lateral bend in the lumbar spine. Dr. Ghanma opined that appellant had degenerative disc disease at the L4-5 level with a disc bulge. He noted that appellant reached maximum medical improvement within three months of his work injury. Dr. Ghanma referred to Table 16-12 and explained that appellant fell into class 1 based on superficial peroneal and/or sural cutaneous nerve involvement.⁶ He opined that this equated to three percent lower extremity impairment based on the default level of C. Dr. Ghanma explained that, for the grade modifier for physical examination findings, appellant was a grade modifier one while he had a grade modifier of zero for clinical studies. Additionally, he found that appellant fell into a grade modifier of three with respect to functional complaints. Dr. Ghanma also indicated that the modifier for functional history was obtained from Table 16-6, although appellant did not utilize canes, crutches or bracing and that the adjustment for clinical studies was obtained from Table 16-8.⁷ He advised that the net adjustment was $(1-1)+(0-1)+(3-1)$ which equaled 1. Dr. Ghanma determined that no adjustment was necessary and opined that appellant had a three percent impairment to the left lower extremity.

² Appellant immediately returned to light duty and returned to full duty on September 25, 1997.

³ Appellant's Claim No. xxxxxx291 was doubled with Claim No. xxxxxx297. He has a separate claim under No. xxxxxx940, which was accepted for left shoulder strain, left rotator cuff tear with arthroscopy of the left shoulder.

⁴ Appellant retired in March 2001.

⁵ Appellant noted that his right leg was bothering him.

⁶ A.M.A., *Guides* 534-36.

⁷ *Id.* at 516, 519.

In an April 19, 2010 report, OWCP's medical adviser reviewed Dr. Ghanma's report. He concurred with Dr. Ghanma's findings and noted that appellant reached maximum medical improvement on January 1, 1998. OWCP's medical adviser referenced tables in the A.M.A., *Guides* and opined that appellant had no more than three percent impairment of the left lower leg.

In a May 27, 2010 decision, OWCP denied appellant's claim for an increased schedule award. It noted the previous award of six percent to the left lower extremity and found that the current evidence only supported three percent impairment.

LEGAL PRECEDENT

The schedule award provision of the Act, and its implementing federal regulations,⁸ 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, the Act 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.⁹ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹⁰ For decisions issued after May 1, 2009, the sixth edition will be used.¹¹

In addressing lower extremity impairments, 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).¹² The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹³

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.¹⁴

⁸ 20 C.F.R. § 10.404.

⁹ *Id.* at § 10.404(a).

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

¹¹ FECA Bulletin No. 09-03 (issued March 15, 2009).

¹² A.M.A., *Guides* 494-531; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

¹³ A.M.A., *Guides* 521.

¹⁴ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

ANALYSIS

OWCP accepted appellant's claim for acute lumbosacral strain and herniated disc bulge at L4-5 with radiculopathy. On July 31, 2008 it granted him a schedule award for six percent impairment of the left leg. When appellant claimed an increased schedule award, the Office referred him to Dr. Ghanma.

In a March 22, 2010 report, Dr. Ghanma, the second opinion physician, noted appellant's history, findings on examination and rated permanent impairment. The sixth edition of the A.M.A., *Guides* provides that lower extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula noted above.¹⁵ Dr. Ghanma referred to Table 16-12 of the sixth edition of the A.M.A., *Guides*, Peripheral Nerve Impairment/Lower Extremity Impairments, which provides that lower extremity impairments can be classified from class 0 to class 4, with class 1 defined as mild problem.¹⁶ He found a class 1 based on superficial peroneal and/or sural cutaneous nerve involvement. Dr. Ghanma advised that it equated to a three percent lower extremity based on the default grade of C. He then applied the grade modifiers for physical examination findings of one and the grade modifier of three for functional complaints described in Table 16-6 through Table 16-8 and applied the net adjustment formula.¹⁷ Dr. Ghanma advised that this would equate to a net adjustment of one, and therefore no adjustment was necessary. However, the Board notes that it appears that a net adjustment of one would result in moving from the default grade C, three percent impairment, to grade D, four percent impairment of the left lower extremity.¹⁸ Additionally, Dr. Ghanma also did not explain why he found a grade modifier for functional history to be three, where the modifier for physical examination was one and clinical studies were zero.¹⁹ The Board notes, however, that this is harmless error as Dr. Ghanma's report, even when viewed most favorably to appellant, does not support more than four percent impairment of the left leg which is less than the amount that he was previously awarded.

The Office medical adviser, in his April 19, 2010 report, utilized Dr. Ghanma's findings, referenced the A.M.A., *Guides* and also opined that appellant had three percent impairment of the left lower extremity. His report provides no basis under the A.M.A., *Guides* on which to attribute any greater left leg impairment than that for which appellant previously received a schedule award.

Consequently, the Board finds that the medical evidence does not support that appellant has more than six percent impairment of his left lower extremity.

¹⁵ *Supra* note 13.

¹⁶ *Id.* at 534.

¹⁷ *See id.* at 516-21.

¹⁸ *See id.* at 534, Table 16-12 (grid for sensory impairment of superficial peroneal and sural nerves).

¹⁹ The A.M.A., *Guides* 516, provides that, if the grade for functional history differs by two or more grades from that defined by physical examination or clinical studies, the functional history should be assumed to be unreliable.

On appeal, appellant noted that he was requesting an award for his right lower extremity. As OWCP has not issued a final decision with respect to the right lower extremity, the Board does not have jurisdiction over the matter.²⁰

CONCLUSION

The Board finds that appellant does not have more than a six percent impairment of his left lower extremity, for which he received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 27, 2010 is affirmed.

Issued: July 6, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

²⁰ See 20 C.F.R. § 501.2(c).