United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket No. 10-1498**
	)	**Issued: March 8, 2011**
U.S. POSTAL SERVICE, HUNTINGTON VALLEY POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 11, 2010 appellant filed a timely appeal from a May 3, 2010 schedule award decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award decision.

ISSUE

The issue is whether appellant met his burden of proof to establish more than an 11 percent impairment of the right lower extremity, for which he received schedule awards.

On appeal, appellant's attorney asserts that the impairment rating of the attending physician should be credited.

FACTUAL HISTORY

On January 23, 1992 appellant, then a 53-year-old building equipment mechanic, sustained an employment-related puncture wound of the right calf when a forklift struck him. He returned to limited duty on March 17, 1992 and on July 20, 1994 was granted a schedule award

for a seven percent impairment of the right leg. On May 27, 2008 appellant filed a traumatic injury claim, alleging that on May 21, 2008 he injured his right leg when he was hit by a ladder. He stopped work on May 28, 2008 and the claim was accepted for contusion of the right leg.[1] Appellant returned to work on September 8, 2008 and retired on October 31, 2009.

On March 31, 2010 appellant filed a schedule award claim and submitted a January 12, 2010 report from Dr. Arthur Becan, an orthopedic surgeon, who noted appellant's complaints of right leg pain and stiffness and his review of medical records. Dr. Becan noted that appellant ambulated with a pronounced limp on the right secondary to right leg pain. He provided findings on physical examination including tenderness over the anterior tibial compartment, along the common peroneal tendons and along the common peroneal and sural nerves and effusion of the right ankle. Right ankle range of motion was diminished; strength graded at 4/5 for dorsiflexion, 4+/5 for plantar flexion and inversion and 3/5 for eversion; and sensibility was diminished in the common peroneal and sural nerve root distribution of the right lower leg and foot. Dr. Becan diagnosed contusion, right lower leg; anterior tibial compartment syndrome, right lower leg; lymphedema, right lower leg; post-traumatic peroneal tendinopathy, right lower leg; and post-traumatic neuropathy, common peroneal and sural nerves right lower leg. He advised that appellant's disability was caused by the January 23, 1992 employment injury and that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (hereinafter),[2] appellant had a total 15 percent impairment of the right lower extremity. Dr. Becan explained that under Table 16-2, Foot and Ankle Regional Grid, appellant had a Class 1 impairment for right peroneal tendinopathy with mild motion deficit, rated as a five percent impairment. He then applied the grade modifiers for functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS) found in Tables 16-6, 16-7 and 16-8, finding a functional history of three, physical examination findings of one and a zero rating for clinical studies. Dr. Becan adjusted the impairment rating, concluding that appellant had a seven percent right lower extremity impairment for right peroneal tendinopathy.

For the right sural and common peroneal nerves under Table 16-12, Peripheral Nerve Impairment, Dr. Becan found that appellant had a Class 1 sensory deficit with a GMFH score of 3. Dr. Becan applied the net adjustment formula for each nerve, finding four percent right lower extremity impairment for each. He combined the three scores for right peroneal tendinopathy, right sural nerve impairment and right common peroneal nerve impairment, for a total 15 percent right lower extremity impairment.

In an April 30, 2010 report, Dr. Craig Uejo, an Office medical adviser who is Board-certified in preventive and occupational medicine, reviewed the record including Dr. Becan's report and advised that the date-of-maximum medical improvement was January 12, 2010, the

[1] The 1992 claim was initially adjudicated by the Office under File No. xxxxxx300 and the 2008 injury under File No. xxxxxx200. The claims were doubled, with the latter becoming the master file. The Office continued to develop the May 21, 2008 claim on the issue of whether appellant sustained a deep vein thrombosis. By decision dated May 6, 2010, an Office hearing representative remanded the claim on this issue and on September 27, 2010 the Office accepted the conditions of right lower extremity chronic venous insufficient and chronic lymphedema.

[2] A.M.A., *Guides* (6th ed. 2008).

date of Dr. Becan's evaluation. The medical adviser provided a right lower extremity impairment evaluation under the sixth edition of the A.M.A., *Guides*, noting that it provided two rating methods for a lower extremity injury, the preferred diagnosis-based impairment and the range of motion method and that the greater of the two methods should be considered the most appropriate. He opined that Dr. Becan's methodology was not in accordance with the A.M.A., *Guides*, noting that Dr. Becan assigned a Class 1 impairment in assessing peroneal tendinopathy, which was a five percent impairment and then assigned a functional history grade modifier of three, a physical examination modifier of one and a clinical studies modifier of zero, moving the impairment rating to seven. Dr. Uejo explained that under the A.M.A., *Guides*, if the grade for functional history differed by two or more grades from that defined by the physical examination or clinical studies (from five to seven in this case), the functional history should be assumed to be unreliable and should be excluded from the grading process and that as appellant's functional history differed by two grades from the clinical studies, it should be excluded. He further advised that, as the physical examination was used to place appellant into an impairment class, as instructed by the A.M.A., *Guides*, this should also be excluded from the grading process. Thus, Dr. Becan's impairment for right peroneal tendinopathy correctly yielded only a four percent impairment.

Dr. Uejo further explained that appellant's peroneal tendinitis resulted in diminished right ankle range of motion with a ratable impairment for dorsiflexion (extension) which resulted in a mild loss or a seven percent right lower extremity impairment and that when comparing the right lower extremity impairments based on peroneal tendinopathy of four percent with a motion loss of seven percent, the greater loss would be considered appropriate. Therefore, appellant had a right lower extremity impairment of seven percent, based on loss of ankle dorsiflexion. Dr. Uejo also opined that, when addressing appellant's peripheral nerve injuries to the sural and common peroneal nerves, again the functional history was considered unreliable and thus excluded and that as appellant's physical examination findings were used to place him into an impairment Class 1, this should also be excluded from the grading process. He then calculated peripheral nerve injuries of the sural and common peroneal nerve under Table 16-12 and advised that each resulted in two percent right lower extremity impairment. The Office medical adviser then combined the three impairments of 7 percent, based on loss of ankle dorsiflexion, with 2 percent due to sural nerve injury and 2 percent due to common peroneal nerve injury, finding a total 11 percent right lower extremity impairment.

On May 3, 2010 appellant was granted a schedule award for an additional four percent impairment of the right lower extremity, for a total of 11.52 weeks, for the period January 12 to April 2, 2010.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[3] and its implementing federal regulations[4] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

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, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[5] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[6] For decisions issued after May 1, 2009, the sixth edition will be used.[7]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[8] Under the sixth edition, for lower extremity impairments the evaluator identifies 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).[9] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[11]

Office procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[12]

ANALYSIS

The Board finds that appellant has established an 11 percent impairment of the right lower extremity. Appellant sustained an injury to his right lower leg on January 23, 1992 when he was hit by a forklift and was granted schedule awards for a 7 percent impairment on July 20, 1994 and an additional 4 percent on May 3, 2010, for a total 11 percent impairment of the right lower extremity.

An Office medical adviser, Dr. Uejo, utilized Dr. Becan's physical examination findings in his impairment analysis. However, he disagreed with Dr. Becan's conclusion of a 15 percent

[5] *Id*. at § 10.404(a).

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

[7] FECA Bulletin No. 09-03 (issued March 15, 2009).

[8] A.M.A., *Guides*, *supra* note 2 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[9] A.M.A., *Guides*, at 494-531.

[10] *Id*. at 521.

[11] *Id*. at 23-28.

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

impairment and found that appellant established an 11 percent impairment of the right lower extremity. When the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of any permanent impairment and the Office may rely on the opinion of its Office medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.[13]

The Office medical adviser agreed with Dr. Becan's conclusion that appellant had a seven percent impairment for loss of ankle dorsiflexion.[14] Regarding nerve impairments to the sural and common peroneal nerves, Dr. Uejo correctly noted that section 16.3a of the sixth edition of the A.M.A., *Guides* provides that if the grade for functional history differs by two or more grades from those defined by physical examination or clinical studies, the functional history is considered unreliable or inconsistent and should be excluded.[15] He also correctly explained that if a physical examination finding is used to determine an impairment class, that finding should not be used to determine class placement.[16] In finding that appellant had impairments of four percent each for sural and right common peritoneal nerve deficits, Dr. Becan identified Class 1 sensory deficits under Table 16-12,[17] with functional history modifiers of three and a zero modifier for clinical studies. As properly found by Dr. Uejo, the functional history modifier should thus be eliminated. He then followed the correct net adjustment formula described above and concluded that appellant had two percent impairments each of the sural and common peroneal nerves. Dr. Uejo then properly combined the impairments for loss of motion and peripheral nerve injuries to yield a total 11 percent right lower extremity impairment.[18]

It is well established that, when, as here, the examining physician does not provide an estimate of impairment conforming to the A.M.A., *Guides*, the Office may rely on the impairment rating provided by an Office medical adviser.[19] Dr. Uejo properly explained how he calculated appellant's right lower extremity impairment by applying the A.M.A., *Guides*. As his report is the only evaluation of record that conforms to the sixth edition of the A.M.A., *Guides*, the Boards finds that his opinion constitutes the weight of the medical evidence.[20]

[13] *Linda Beale*, 57 ECAB 429 (2006).

[14] While Dr. Uejo disagreed with Dr. Becan's methodology, as explained earlier, both physicians found that appellant was entitled to a seven percent impairment for peroneal tendinopathy with ankle dorsiflexion deficit.

[15] A.M.A., *Guides*, *supra* note 2 at 516.

[16] *Id*. at section 16.3b at 517.

[17] *Id*. at 534.

[18] *Id*. at 604.

[19] *J.Q.*, 59 ECAB 366 (2008).

[20] *See H.P.*, 62 ECAB ____ (Docket No. 10-962, issued November 10, 2010).

CONCLUSION

The Board finds that appellant did not establish that he has greater than an 11 percent impairment of the right lower extremity.[21]

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[21] Appellant retains the right to file a claim for an increased schedule award that is based on new exposure or on medical evidence indicating the progression of an employment-related condition, without new exposure to employment factors, resulting in a greater permanent impairment than previously calculated. *See A.A.*, 59 ECAB 726 (2008).