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

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| **J.D., Appellant** | ) | |
| **and** | ) | **Docket No. 11-629** |
| | ) | **Issued: November 16, 2011** |
| **U.S. POSTAL SERVICE, POST OFFICE, Washington, DC, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On January 13, 2011 appellant filed a timely appeal from the August 4, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for schedule award compensation. Pursuant to the Federal Employees' Compensation Act (FECA)[1] 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 met his burden of proof to establish that he has permanent impairment entitling him to schedule award compensation.

### ***FACTUAL HISTORY***

OWCP accepted that on May 11, 2004 appellant, then a 34-year-old clerk, sustained a left ankle strain when he tripped on mail trays and twisted his left ankle. He received OWCP compensation for periods of disability.

[1] 20 C.F.R. § 8101 *et seq.*

In a July 5, 2006 report, Dr. Raymond D. Greaser, an attending Board-certified pain management physician, indicated that physical examination showed decreased sensation in appellant's left leg. Motor function, deep tendon reflex and straight leg tests were deferred in both legs. Dr. Greaser diagnosed chronic left ankle and foot pain status post trauma likely consistent with a left lower extremity complex regional pain syndrome (CRPS). He obtained a functional capacity evaluation on October 5, 2006 which found that appellant was unable to perform any sedentary work due to reduced weight bearing of the left lower extremity, left foot pain, immobilization of left foot/ankle and use of cane for all weight-bearing activities.

In a June 22, 2006 report, Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon who served as an OWCP referral physician, reported his findings on examination indicating that there were no signs of a chronic pain syndrome such as reflex sympathetic dystrophy or CRPS in the left lower extremity. The skin, blood flow and hair growth were normal and light touch did not cause exquisite pain. Dr. Hanley indicated that he was able to put appellant's left ankle through a relatively normal range of motion. He diagnosed history of left ankle sprain and indicated that appellant had no significant pathology in his left ankle.[2] Dr. Hanley stated that appellant could perform his regular work but recommended that he take a 30-minute and 15-minute break per day.

OWCP determined that there was a conflict in the medical evidence between Dr. Greaser and Dr. Hanley regarding the nature of appellant's left ankle condition and the extent of his disability. In order to resolve the conflict, appellant was referred to Dr. Wylie D. Lowery, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination and opinion on these matters.

In a May 31, 2007 report, Dr. Lowery reported findings on examination and diagnosed "[l]eft peroneal strain, foot and ankle sprain, medically probably related to the accident of May 11, 2004, resolved," and stated that appellant's initial diagnosis of ankle sprain had resolved as the type of injury he sustained would have been expected to resolve within a six-week period.[3] He did not find any specific objective criteria to establish a diagnosis of reflex sympathetic dystrophy or CRPS as there were no current clinical or radiographic findings to support these diagnoses. Dr. Lowery indicated that specific recommendations for medical treatment would include a current bone scan. He indicated that if the bone scan were negative, he would state that appellant could return to his regular work full time.[4]

In a December 20, 2007 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective December 13, 2007 on the grounds that he had no residuals of his

[2] Dr. Hanley stated, "I believe a significant portion of his complaints presented to me today represent fabrication and contrivance and do not represent true pathology."

[3] On physical examination of his legs, appellant had good dorsalis and posterior tibial pulses and sensation was intact to light touch with good capillary refill. There was no skin abnormality, temperature differential between feet and or hair loss.

[4] On July 27, 2007 OWCP received a bone scan radiology report of the left foot/ankle, dated July 12, 2007, containing the impression "presumed degenerative uptake of the first [metatarsophalangeal] joint of the left foot. No other scintigraphic abnormality in either foot."

May 11, 2004 employment injury after that date. It found that the weight of the medical evidence with respect to this matter rested with the well-rationalized opinion of Dr. Lowery.

In an April 3, 2008 report, Dr. Abraham Asmamaw, an attending Board-certified physical medicine and rehabilitation physician, found that appellant had an 18 percent permanent impairment of his whole person under Chapter 17.2m on page 553 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.* In a May 20, 2008 report, Dr. Asmamaw determined that appellant had an 18 percent permanent impairment of his left leg due under Chapter 17.2m.[5]

OWCP determined that a June 26, 2008 report of an OWCP medical adviser created a conflict in the medical evidence with the opinion of Dr. Asmamaw regarding appellant's left leg impairment and referred appellant to Dr. David C. Johnson, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion on the matter. In an August 20, 2008 report, Dr. Johnson indicated that the examination of appellant's left leg was normal and determined that he had no impairment of his left leg under the standards of the fifth edition of the A.M.A., *Guides.*

In a February 23, 2009 decision, OWCP denied appellant's schedule award claim finding that the weight of the medical opinion with respect to this matter rested with the well-rationalized opinion of Dr. Johnson.

In an April 12, 2009 report, Dr. Amy Traylor, an attending Board-certified neurologist, described appellant's medical condition and diagnosed CRPS, type 1, involving the left leg and ankle. She did not provide any opinion on the permanent impairment of appellant's left leg.

In a July 10, 2009 decision, OWCP denied appellant's schedule award claim noting that Dr. Traylor did not provide any opinion on the permanent impairment of appellant's left leg in her April 12, 2009 report.

In a September 15, 2009 report, Dr. Traylor stated that appellant was under her care for reflex sympathetic dystrophy/causalgia (CRPS, type 1) "involving the left leg and ankle on May 11, 2004" and ankle internal derangement. She indicated that appellant had reached maximum medical improvement and applied the standards of the fifth edition of the A.M.A., *Guides.* Dr. Traylor determined that under Chapter 17.2m on page 553 (concerning reflex sympathetic dystrophy and CRPS) and Table 13-15 on page 336 (concerning gait derangement) appellant had an 18 percent permanent impairment of his left leg. She stated that appellant's subjective complaints were constant pain radiating to the left leg, difficulty with ambulation and gait unsteadiness, swelling of his left ankle/foot, weakness of his left foot and left leg, pain on weight bearing, required use of a cane for ambulation and loss of range of active motion.

In a February 25, 2010 decision, OWCP denied appellant's schedule award claim finding that the September 15, 2009 report of Dr. Traylor had little probative value with respect to appellant's claimed left leg impairment.

[5] On March 7, 2008 appellant filed a claim for a schedule award.

In an April 29, 2010 report, Dr. Traylor stated that appellant was under her care for reflex sympathetic dystrophy and CRPS, type 1, involving the left leg, left foot and the left ankle following a work-related injury while he was working as a postal clerk.[6] She stated that it was well established at that time and as an ongoing determination supported by OWCP that appellant has been permanently injured from this work-related injury that occurred on May 11, 2004. Dr. Traylor indicated that the condition of reflex sympathetic dystrophy, otherwise known as CRPS, type 1, was by its very nature permanent and progressive and unchanging in its signs and symptoms. She stated, "Therefore, the presence of this condition itself has been well established as permanent in the medical community as well as permanent in [appellant]." Dr. Traylor noted that the date of appellant's maximal medical improvement was May 20, 2008 and stated:

> "[Appellant's] impairment rating using [the fifth edition of the A.M.A., *Guides*], Chapter 17.25, pg 553 Causalgia (CRPS, type 1) because of ankle/foot injury resulted [sic] the left lower limbs has been rated using station/gait impairment, Chapter 13.5 and Table 13-15 with a rating of 18 percent impairment. [Appellant's] impairment as consistent with CRPS, type 1, is presented in Table 16-16 and he suffers from marked decrease of active range of motion in his left ankle, left foot and his left leg as 18 percent from Figure 16-28 and the sensory/pain deficit as 65 percent (Table 16-10, grade 26 to 80 percent). Combining 18 percent [range of motion] and 65 percent sensory/pain [impairment rating] = 71 percent lower extremity = 43 percent whole person impairment."

In an August 4, 2010 decision, OWCP affirmed its February 25, 2010 decision finding that appellant had not established that he had permanent impairment entitling him to schedule award compensation.

## ***LEGAL PRECEDENT***

An employee seeking compensation under FECA[7] has the burden of establishing the essential elements of his claim, including that he sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.[8] The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the

[6] Dr. Traylor stated that appellant's subjective complaints were constant pain radiating to the left leg, difficulty with ambulation and gait unsteadiness, swelling of the left ankle/foot, weakness of his left foot, left ankle, and left leg, marked pain on weight bearing that requires a cane for ambulation, and loss of range of active motion in his left foot, ankle and leg.

[7] 5 U.S.C. §§ 8101-8193.

[8] *See Bobbie F. Cowart*, 55 ECAB 476 (2004). In *Cowart*, the employee claimed entitlement to a schedule award for permanent impairment of her left ear due to employment-related hearing loss. The Board determined that appellant did not establish that an employment-related condition contributed to her hearing loss and, therefore, it denied her claim for entitlement to a schedule award for the left ear.

relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

The schedule award provision of FECA[10] and its implementing regulations[11] 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, 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 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[12] The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.[13]

Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[14] When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.[15] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[16]

## ***ANALYSIS***

OWCP accepted that on the August 4, 2010 appellant sustained a left ankle strain. He claimed entitlement to schedule award compensation but OWCP denied his claim finding that he did not submit a rationalized medical report showing that he had permanent impairment entitling him to schedule award compensation.

The Board finds that appellant did not submit sufficient medical evidence to establish that he has permanent impairment entitling him to schedule award compensation.

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[9] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

[10] 5 U.S.C. § 8107.

[11] 20 C.F.R. § 10.404 (1999).

[12] *Id*.

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

[14] 5 U.S.C. § 8123(a).

[15] *William C. Bush*, 40 ECAB 1064, 1975 (1989).

[16] *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

In a September 15, 2009 report, Dr. Traylor, an attending Board-certified neurologist, stated that appellant was under her care for reflex sympathetic dystrophy/causalgia (CRPS, type 1) "involving the left leg and ankle on May 11, 2004" and ankle internal derangement. She indicated that appellant had reached maximum medical improvement and applied the standards of the fifth edition of the A.M.A., *Guides*. Dr. Traylor determined that under Chapter 17.2m on page 553 (concerning reflex sympathetic dystrophy and CRPS) and Table 13-15 on page 336 (concerning gait derangement) that appellant had an 18 percent permanent impairment of his left leg. She stated that appellant had subjective complaints in his left leg and ankle in the form of pain and weakness.

The Board finds that the September 15, 2009 impairment rating of Dr. Traylor is of limited probative value regarding the permanent impairment of appellant's left leg. Dr. Traylor provided an opinion on appellant's left leg impairment using the standards of the fifth edition of the A.M.A., *Guides*. However, the sixth edition of the A.M.A., *Guides* was in effect at the time the report was produced and the time that OWCP evaluated the report in its February 25, 2010 decision denying appellant's schedule award claim.[17] In addition, Dr. Traylor based her impairment rating of 18 percent permanent impairment on her belief that appellant suffered reflex sympathetic dystrophy, causalgia and/or CRPS due to his May 11, 2004 employment injury. Appellant's claim was only accepted for a left ankle strain and Dr. Traylor did not provide a rationalized medical opinion, with a complete medical history including physical examination and diagnostic testing findings, explaining how appellant could have sustained reflex sympathetic dystrophy, causalgia and/or CRPS on May 11, 2004. In fact, the record contains evidence showing that appellant not have such a condition after his May 11, 2004 employment injury.[18] Moreover, Dr. Traylor did not provide any description of objective findings and she appears to have based her calculations on appellant's reported subjective findings, nor did she explain the particular manner in which she applied the standards of the referenced chapters and tables of the A.M.A., *Guides*.

Appellant also submitted an April 29, 2010 report in which Dr. Traylor determined that he has a 71 percent permanent impairment of his left leg, comprised of the above-described 18 percent impairment combined (using the Combined Values Chart on page 604) with a 65 percent rating for sensory loss/pain derived from Table 16-10 on page 482. This report of Dr. Traylor contains many of the defects of her September 15, 2009 report. She again applied the standards of the fifth edition of the A.M.A., *Guides* at a time when the standards of the sixth edition were in effect. Dr. Traylor's impairment rating is based on the unsupported belief that appellant had reflex sympathetic dystrophy and/or CRPS due to his May 11, 2004 employment injury. She indicated that the condition of reflex sympathetic dystrophy, otherwise known as CRPS, was by its very nature permanent and progressive and unchanging in its signs and symptoms and stated, "Therefore, the presence of this condition itself has been well established as permanent in the

[17] *See supra* note 13.

[18] In a May 31, 2007 report, Dr. Lowery, a Board-certified orthopedic surgeon serving as an impartial medical specialist, stated that he did not find any specific objective criteria to establish a diagnosis of reflex sympathetic dystrophy or CRPS as there were no current clinical or radiographic findings to support these diagnoses. It should be noted that OWCP relied on this report to terminate appellant's compensation effective December 13, 2007 on the grounds that he ceased to have residuals of his May 11, 2004 employment injury after that date.

medical community as well as permanent in [appellant]." However, Dr. Traylor did not provide any detailed explanation, including a complete medical history and objective findings, to support such an opinion.[19] Moreover, she did not provide a rationalized opinion explaining how her finding of a 65 percent rating for sensory loss/pain was related to impairment from appellant's May 11, 2004 employment injury, accepted for a left ankle strain. Dr. Traylor referenced Table 16-10 on page 482 with respect to this deficit but she did not identify any particular nerve root causing peripheral nerve disorder as required by this table. In her April 29, 2010 report, she again appears to have based her opinion on appellant's subjective rather than objective factors.[20]

For these reasons, appellant did not submit medical evidence showing that he has permanent impairment entitling him to schedule award compensation and OWCP properly denied his claim. He may request a schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment.

Appellant may request a schedule award or 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 did not meet his burden of proof to establish that he has permanent impairment entitling him to schedule award compensation.

[19] Dr. Traylor improperly stated that OWCP had accepted that appellant had been permanently injured by his May 11, 2004 employment injury.

[20] The record also contains an April 3, 2008 report in which Dr. Asmamaw, an attending Board-certified physical medicine and rehabilitation physician, found that appellant had an 18 percent permanent impairment of his whole person under Chapter 17.2m on page 553 of the fifth edition of the A.M.A., *Guides*. In a May 20, 2008 report, Dr. Asmamaw determined that appellant had an 18 percent permanent impairment of his left leg due under Chapter 17.2m. These reports have many of the same defects as those of Dr. Traylor, including the improper assumption that appellant had work-related reflex sympathetic dystrophy or CRPS. In addition, the Board has held that a schedule award is not payable under section 8107 of FECA for an impairment of the whole person. *See Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the August 4, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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