United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 11-403**
	)	**Issued: September 20, 2011**
U.S. POSTAL SERVICE, DALLAS NATIONAL DISTRIBUTION CENTER, Dallas, TX, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 7, 2010 appellant filed a timely appeal from a November 3, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding her schedule award claim. 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 the claim.

ISSUE

The issue is whether appellant has more 16 percent impairment of the left lower extremity, for which she received a schedule award.

FACTUAL HISTORY

On July 1, 2009 appellant, then a 54-year-old mail handler, injured her left foot when an over-the-road (OTR) container rolled over her left foot. OWCP accepted the claim for contusion

[1] 5 U.S.C. §§ 8101-8193.

of foot and ankle, left and left foot sprain. It subsequently accepted left ganglion cyst and closed dislocation of tarsometatarsal joint, left. OWCP paid appropriate benefits. Appellant was previously rated with 14 percent permanent impairment to left lower extremity (left thigh, calf and knee) under case number xxxxxx137.

On April 1, 2010 appellant filed a claim for a schedule award. In a March 10, 2010 report, Dr. Jose Trevino, a Board-certified family practitioner, noted examining appellant on March 9, 2010 and set forth appellant's history and course of treatment. He diagnosed contusion of left foot and sprain/strain left ankle. Dr. Trevino opined that appellant reached maximum medical improvement and was able to tolerate her regular duties despite complaints of sharp pain prolonged ambulation and standing. On a lower extremity impairment evaluation worksheet, he opined that appellant had seven percent left leg impairment for a contusion with Grade 3 sprain of left foot/ankle. Dr. Trevino stated that impairment ratings for diagnosed-based impairments and range of motion models were equivalent.

In an April 13, 2010 letter, OWCP advised appellant that Dr. Trevino's impairment rating was unacceptable as it did not identify the edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) that was used. OWCP advised that all impairment ratings must be in accordance with the sixth edition of the A.M.A., *Guides*. On May 25, 2010 OWCP received a copy of Dr. Trevino's March 10, 2010 report indicating that the sixth edition of the A.M.A., *Guides* was used in the calculation of appellant's impairment.

On July 7, 2010 an OWCP medical adviser reviewed the statement of accepted facts and the medical evidence of record, including Dr. Trevino's March 10, 2010 reports. He noted Dr. Trevino did not provide the actual measurements in support of an impairment based on loss of range of motion and that the A.M.A., *Guides*, as explained in section 16.7, only allowed a range of motion impairment if no other approach was available. The medical adviser further noted that, while there was clear-cut evidence for a diagnosis-based determination, it was unclear what diagnosis Dr. Trevino used, especially in light of the fact he stated the diagnosis and range of motion impairment ratings were equivalent. He concluded that the information from Dr. Trevino's report was not adequate to allow an impairment determination and recommended a second opinion evaluation by a Board-certified physiatrist.

OWCP referred appellant, along with an updated statement of accepted facts, a list of questions and the medical record, to Dr. Sofia M. Weigel, a Board-certified physiatrist, for a second opinion evaluation. In an August 5, 2010 report, Dr. Weigel noted the history of injury, her review of the medical records and statement of accepted facts, and appellant's current complaints. She presented examination findings noting an essentially normal neurological and motor examination. Bilateral foot examination was essentially normal with decreased active range of motion with the dorsiflexion to neutral. Dr. Weigel opined that maximum medical improvement was reached on March 9, 2010. Under the sixth edition of the A.M.A., *Guides*, she opined that appellant had two percent permanent impairment of left lower extremity. Under Table 16.2, page 501, Dr. Weigel stated that a class 1 ankle strain with mild motion deficits had default value of two percent. She indicated that appellant had a grade modifier for Functional History (GMFH) of 1; a grade modifier for Physical Examination (GMPE) of 1; and a grade modifier for Clinical Studies (GMCS) of 1. Dr. Weigel applied the net adjustment formula of

(GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) and found (1-1) + (1-1) + (1-1) equaled a net adjustment of zero. Thus, she opined that appellant had two percent left lower extremity impairment.

On September 29, 2010 an OWCP medical adviser reviewed the record and the statement of accepted facts along with Dr. Weigel's August 5, 2010 report for the purposes of determining impairment for the left leg. He opined that maximum medical improvement was achieved on March 9, 2010. Under the sixth edition of the A.M.A., *Guides*, a class 1 ankle strain with mild motion deficits under Table 16-2, page 501 had default value 2 percent. The medical adviser concurred with Dr. Weigel's determinations that appellant had grade modifiers of 1 for functional history, physical examination, and clinical studies and that there was no net adjustment. Accordingly, he opined that appellant's class 1, grade C ankle strain with mild motion deficit resulted in two percent impairment. The medical adviser noted that, since appellant previously received 14 percent permanent impairment based on calf and thigh atrophy, the current determination of 2 percent should be combined with the previous value of 14 percent, which results in 16 percent total left lower extremity impairment. He then subtracted the previously value of 14 percent from the total left lower extremity impairment of 16 percent, to find 2 percent additional impairment.

By decision dated November 3, 2010, OWCP awarded appellant two percent additional left upper extremity impairment. The award ran for the period March 9 to April 19, 2010, for 5.76 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of FECA[2] and its implementing regulations[3] 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. FECA, 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.[4] 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 appropriate standard for evaluating schedule losses.[5] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[6]

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404.

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

[5] *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[6] 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).

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.[7] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[8]

It is well established that preexisting impairments to the scheduled member are to be included when determining entitlement to a schedule award.[9] OWCP procedures state that any previous impairment to the member under consideration is included in calculating the percentage of loss except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.[10]

OWCP 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.[11]

ANALYSIS

Appellant previously received a schedule award for 14 percent impairment of the left lower extremity under a separate claim. She claimed a schedule award under the current case. While Dr. Trevino opined that appellant had seven percent permanent impairment under the sixth edition of the A.M.A., *Guides* for both range of motion and diagnosed-based impairment, OWCP's medical adviser found there was insufficient information in Dr. Trevino's report to support such a rating. The Board agrees. The medical adviser properly noted Dr. Trevino did not provide the actual measurements in support of an impairment based on loss of range of motion. Additionally, the A.M.A., *Guides*, as explained in section 16.7, page 543 only allows a range of motion impairment if no other approach was available. In this case, the medical adviser stated that there was clear-cut evidence for a diagnosis-based determination. However, it was unclear what diagnosis Dr. Trevino used in light of the fact he stated the diagnosis and range of motion impairment ratings were equivalent. As Dr. Trevino did not clearly explain how his impairment rating was calculated in accordance with the A.M.A., *Guides*, his opinion on permanent impairment is of limited probative value.

In an August 5, 2010 report, Dr. Weigel, a second opinion physician, reviewed the medical record, the statement of accepted facts and presented her examination findings. She opined that maximum medical improvement was reached on March 9, 2010. Under the sixth edition of the A.M.A., *Guides*, Dr. Weigel opined that appellant had two percent impairment for class 1, grade C left ankle strain with mild motion deficits under Table 16-2, page 501. She

[7] A.M.A., *Guides* 494-531.

[8] *Id.* at 521.

[9] *Michael C. Milner*, 53 ECAB 446, 450 (2002); *Raymond E. Gwynn*, 35 ECAB 247 (1983).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.7.a(2)(a) (January 2010).

[11] *See id.* at Chapter 2.808.6(d) (January 2010).

looked at the adjustment grids for functional history, physical examination and clinical studies under Table 16-6, Table 16-7 and Table 16-8 respectively and found appellant's mild problem equated to a grade modifier of 1 for each adjustment identified. Dr. Weigel properly applied the net adjustment formula and found no net adjustment.[12] Thus, she properly concluded that after net adjustment appellant had two percent impairment for class 1, grade C left ankle strain with mild motion deficits under Table 16-2, page 501.

In his September 29, 2010 report, OWCP's medical adviser concurred with the impairment finding. He also properly noted that appellant had previously been rated for 14 percent impairment of the left leg under a separate claim for calf and thigh atrophy. The medical adviser combined[13] the previous rating of 14 percent with the 2 percent additional impairment calculated by Dr. Weigel to arrive at 16 percent total left leg impairment. He concluded that appellant had two percent additional impairment of the left leg.

On appeal appellant argues that the impairment determination should not have been combined with the impairment resulting from her 2007 knee injury, which was corrected with endoscopic surgery, and separate from her foot injury. As noted above, since her preexisting impairment was due to a work-related injury, OWCP procedures provide that it is to be included in calculating the percentage of loss and then the percentage already paid subtracted from the total percentage of impairment.[14] Appellant further argues that her foot injury has caused continued swelling across the top of her foot. To the extent she is arguing that her medical condition has not been taken into proper account during the impairment determination, the record establishes that her impairment was appropriately evaluated under the standards of the sixth edition of the A.M.A, *Guides*. There is no medical evidence of record in conformance with the A.M.A, *Guides* supporting greater impairment.

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 16 percent permanent impairment of the left leg, of which 14 percent was previously paid under a prior claim and 2 percent resulted from the current claim.

[12] (GMFH-CDX 1-1-) + (GMPE-CDX 1-1) + (GMCS-CDX 1-1) = 0.

[13] A.M.A., *Guides* 604, Combined Values Chart.

[14] *See supra* note 10.

ORDER

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

Issued: September 20, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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