

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

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**L.F., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Westfield, NJ, Employer**

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**Docket No. 11-1434  
Issued: February 21, 2012**

*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 May 31, 2011 appellant filed a timely appeal of the March 18, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his schedule award claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 is entitled to a schedule award.

On appeal, appellant contends that his attending physician's opinion that he has reached maximum medical improvement and has a 20 percent disability is sufficient to establish his entitlement to a schedule award.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On September 14, 2004 OWCP accepted that appellant, then a 52-year-old letter carrier, sustained aggravated degenerative joint disease and hallux valgus of the right foot, and aggravated pain in the right limb causally related to carrying heavy mail and walking at work as a letter carrier.

On June 10, 2010 appellant filed a claim for a schedule award. In an October 11, 2010 medical report, Dr. Suzan F. Campbell, an attending Board-certified podiatrist, indicated that she had not treated appellant in two years since he had been battling kidney cancer which had left him with some numbness in his left heel and side of the foot. She advised that he had severe degenerative joint disease and limited range of motion in the first and second toes. Appellant also had hammertoe as the second toe contracted over the first toe. He experienced a burning sensation in the first metatarsophalangeal (MP) joint and ball of the foot. The hallux abduct valgus deformity had worsened on appellant's left foot. However, due to his cancer he was not a surgical candidate at that time. Dr. Campbell stated that appellant was unable to stand or walk more than 10 minutes without pain. Appellant could stand three seconds on each foot, single support. Although his right foot had no bony deformities, the neuropathy in his feet made it difficult for him to perform any jobs that required standing or walking. Dr. Campbell concluded that appellant had reached maximum medical improvement and that he was 20 percent disabled due to his bilateral foot condition.

By letter dated December 13, 2010, OWCP requested that appellant submit medical evidence from an attending physician regarding the extent of his permanent impairment due to his work-related conditions, which should include a finding that he had attained maximum medical improvement, and provide a detailed description of the impairment and a schedule award rating according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a January 11, 2011 report, Dr. Campbell noted that appellant could not move both of his big and second toes. Appellant underwent right foot surgery on July 2, 2003 due to pain on ambulation and degenerative joint disease of the first MP joint with hammertoes and overlapping second and third toes. Although the surgery corrected the deformity, he had no relief from pain. Appellant was unable to walk more than one-quarter of a mile without experiencing numbness and pain in his feet. He could stand three seconds on each foot, single support. Dr. Campbell advised that appellant had no atrophy or ankylosis, just numbness in the area of the toes. A magnetic resonance imaging scan revealed no neuroma, just fluid between the metatarsals. Dr. Campbell advised that appellant had reached maximum medical improvement.

By letter dated February 4, 2011, OWCP advised Dr. Campbell that her medical reports were insufficient to establish appellant's claim. It requested that she submit a report which included a finding that he had attained maximum medical improvement, and provided a detailed description of the impairment and a schedule award rating according to the sixth edition of the A.M.A., *Guides*.

In a March 1, 2011 letter, appellant advised OWCP that according to Dr. Campbell she had already answered all of its questions.

Appellant resubmitted reports from Dr. Campbell that were of record prior to the filing of his June 10, 2010 Form CA-7. In a September 21, 2004 work capacity evaluation, Dr. Campbell advised that he could not perform his usual work duties due to arthritis and lack of motion in his feet. Appellant could work eight hours per day with restrictions. In a September 26, 2008 report, Dr. Campbell advised that his bilateral foot degenerative joint disease with hallux valgus and hammertoes was aggravated by his work duties. She concluded that appellant's disability for work since July 2, 2003 was due to his bilateral foot condition and work duties.

A May 24, 2004 progress note from a physical therapist stated that appellant had continuing complaints of pain on ambulation and tenderness of the second toe, weakness and decreased range of motion. Appellant had small gains in active motion of the second toe. He had achieved maximum gains of physical therapy. It was recommended that appellant be discharged from such treatment.

In a March 18, 2011 decision, OWCP denied appellant's claim for a schedule award. It found that he failed to submit sufficient medical evidence to support his claim.

### **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>2</sup> and its implementing federal regulations,<sup>3</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>4</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides*<sup>6</sup> as the appropriate edition for all awards issued after that date.<sup>7</sup>

A claimant seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.<sup>8</sup> A claimant seeking a schedule award therefore has the burden of establishing that his accepted

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<sup>2</sup> *Id.* at § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *Ausbon N. Johnson*, 50 ECAB 304 (1999).

<sup>5</sup> *Supra* note 2.

<sup>6</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

<sup>8</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

employment injury caused permanent impairment of a scheduled member, organ or function of the body.<sup>9</sup>

### ANALYSIS

OWCP accepted that appellant sustained aggravated degenerative joint disease and hallux valgus of the right foot and aggravated pain in the right limb while in the performance of duty. On June 10, 2010 appellant filed a claim for a schedule award. In an October 11, 2010 report, Dr. Campbell found that he had reached maximum medical improvement and sustained 20 percent impairment due to severe degenerative joint disease, limited range of motion and hammertoe of the first and second toes and hallux abduct valgus deformity of the left foot and bilateral foot neuropathy. She did not provide an impairment rating based on the A.M.A., *Guides*. Dr. Campbell failed to identify the pages, tables and grading schemes of the A.M.A., *Guides* used in making appellant's impairment rating. Her other reports addressed his bilateral foot conditions, medical treatment and work restrictions and found that he had reached maximum medical improvement. Dr. Campbell did not address the issue of employment-related impairment. The Board notes that OWCP has not accepted a left foot condition as employment related.<sup>10</sup> As stated, the instant claim was accepted for aggravated degenerative joint disease and hallux valgus of the right foot and aggravated pain in the right limb. Dr. Campbell did not respond to OWCP's request for additional medical evidence. As appellant has the burden of proof to establish employment-related impairment, the Board finds that Dr. Campbell's reports are of diminished probative value and insufficient to establish his entitlement to a schedule award.

The progress note from appellant's physical therapist is of diminished probative value as a physical therapist is not a "physician" as defined under FECA.<sup>11</sup>

Appellant has not submitted sufficient medical evidence to establish that, as a result of his employment injuries, he sustained any permanent impairment to a scheduled member or function such that he would be entitled to a schedule award. OWCP procedures and the Board precedent require that the record contain a medical report with a detailed description of the impairment.<sup>12</sup> This description must be in sufficient detail, so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>13</sup> Appellant has the burden of proof to submit medical evidence

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<sup>9</sup> *E.g., Russell E. Grove*, 14 ECAB 288 (1963) (where medical reports from the attending physicians showed that the only leg impairment was due to arthritis of the knees, which was not injury related, the claimant failed to meet his burden of proof to establish entitlement to a schedule award).

<sup>10</sup> For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>11</sup> See 5 U.S.C. § 8101(2); A.C., Docket No. 08-1453 (issued November 18, 2008).

<sup>12</sup> See *Peter C. Belkind*, 56 ECAB 580 (2005); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c)(1) (August 2002).

<sup>13</sup> See *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

supporting that he has a permanent impairment of a scheduled member or function of the body.<sup>14</sup> As such evidence has not been submitted OWCP properly denied his request for a schedule award.<sup>15</sup>

Contrary to appellant's assertion on appeal, Dr. Campbell's opinion that he had reached maximum medical improvement and had a 20 percent disability is not sufficient to establish his entitlement to a schedule award. As stated, her report was found insufficient to establish entitlement to a schedule award as she did not evaluate his impairment in accordance with the sixth edition of the A.M.A., *Guides*. There is no medical evidence of record supporting such 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 has not met his burden of proof to establish entitlement to a schedule award.

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<sup>14</sup> See *Annette M. Dent*, 44 ECAB 403 (1993).

<sup>15</sup> The Board notes that OWCP did not forward the case to the district medical adviser for review. OWCP's procedure manual provides that the claims examiner will ask the district medical adviser to evaluate cases when the case appears to be in posture for a schedule award determination. As the matter was deemed not to be in posture for a schedule award determination, OWCP was not required to seek review by the district medical adviser. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3 (June 2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 18, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2012  
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