

left ankle causing a contusion. OWCP accepted the claim for back contusion, open wound of left knee, leg and ankle and sprain of lumbar region.

On September 24, 2009 appellant filed a schedule award claim.

In a September 23, 2009 medical report, Dr. Duckin Suh, a chiropractor, reported that he had been treating appellant for her left leg condition since June 11, 2008. Appellant complained of constant tingling sensation in the left Achilles tendon and muscle spasms in the left calf. Electromyogram tests were negative for sensory neuropathy. Dr. Suh diagnosed contusion of the lower leg and crushing injury of the lower leg. He stated that appellant had reached a permanent and stationary status and opined that she should reach maximum medical improvement within one year. Dr. Suh concluded that she had a one percent impairment of the left lower extremity.

On October 11, 2009 an OWCP district medical adviser reviewed Dr. Suh's September 23, 2009 report and stated that appellant had not yet reached maximum medical improvement, noting that the chiropractor opined that it would be reached by September 23, 2010. The district medical adviser agreed with Dr. Suh's conclusion that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a crush injury to the left ankle/foot, which corresponded to a one percent permanent impairment of the lower left extremity.²

By decision dated October 30, 2009, OWCP denied appellant's schedule award claim findings that she had not yet reached maximum medical improvement.

On November 17, 2009 appellant requested an oral hearing before an OWCP hearing representative.³

In a February 24, 2010 medical report, Dr. Suh reported that appellant had improved with conservative management but still had residual pain, spasms and abnormal sensations in the left calf and calcaneal tendon areas. He concluded that she had reached maximum medical improvement. Dr. Suh opined that, based on the category of soft tissue, contusion/crush injury and per the criteria of significant consistent palpatory findings assigned to class 1, appellant had a mid-range value of one percent permanent impairment of the lower left extremity.⁴

By decision dated May 13, 2010, an OWCP hearing representative vacated the October 30, 2009 decision and remanded the case for further development. OWCP noted that Dr. Suh's February 24, 2010 report was new medical evidence and the case should be referred to

² A.M.A., *Guides* 501, Table 16-2.

³ A hearing was scheduled for February 22, 2010. By letter dated February 19, 2010, appellant's union representative, Vivian Henderson, informed OWCP that appellant was unable to attend the hearing but would be submitting additional medical documentation. Appellant's appeal was changed to a review of the written record based on the union representative's letter.

⁴ An earlier report was received from Dr. Suh dated February 17, 2010, but in a letter dated February 24, 2010, appellant's union representative requested that OWCP disregard the report because it contained an error in the actual percentage of total impairment.

an OWCP district medical adviser for an opinion on whether appellant had reached maximum medical improvement and the extent of her permanent impairment.

On May 24, 2010 an OWCP medical adviser reviewed Dr. Suh's February 24, 2010 report and agreed that appellant had reached maximum medical improvement and had a one percent permanent impairment of the lower leg. In accordance with the A.M.A., *Guides*, the medical adviser stated that, based on the diagnosis of category "soft tissue" with "consistent palpatory findings," she received a class 1 with mid-range default value of one percent lower extremity impairment. For the adjustment grids of functional history, appellant received a grade modifier 1 for examination and modifier 0 for clinical history which corresponded to the net adjustment of negative 1 and grade B impairment of one percent.

By decision dated September 23, 2010, OWCP granted appellant a schedule award for one percent permanent impairment of the left lower extremity. The award covered a period of 2.88 weeks from February 24 to March 16, 2010.

On October 12, 2010 appellant requested an oral hearing before an OWCP hearing representative.

At the February 28, 2011 hearing, appellant requested an increased schedule award and testified that her injury resulted in a scar on her leg and that her Achilles tendon continued to bother her. She submitted a February 4, 2011 medical report from Dr. Suh.

In the February 4, 2011 medical report, Dr. Suh diagnosed appellant with scar conditions secondary to surgery for the crushing injury in addition to his previous diagnoses of contusion and crushing injury of the left leg. He gave appellant a seven percent impairment rating of the whole person, noting that daily activities such as bathing and dressing were frequently interrupted due to scar irritation, but only to a minimal degree as the area involved about one percent of body surface area. Dr. Suh noted that ratings began at class 1 at five percent and increased by 1 step because the physical examination findings were considered to be in class 2 due to involvement of the medial side of the left calf and Achilles tendon area which is difficult or impossible to conceal with short pants or skirts.

By decision dated May 12, 2011, OWCP affirmed the September 23, 2010 decision finding that appellant had no more than one percent permanent impairment of the left lower extremity. The hearing representative noted that appellant was not entitled to greater impairment for scarring or disfigurement to her legs.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.⁵ 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

⁵ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶

The A.M.A., *Guides* provide a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF). 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). The net adjustment formula is GMFH - CDX + GMPE - CDX + GMCS - CDX. Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.⁷

ANALYSIS

OWCP accepted appellant's claim for back contusion, open wound of left knee, leg and ankle and sprain of back lumbar region. By decision dated September 23, 2010, it granted her a schedule award for a one percent permanent impairment of the lower left extremity, using the applicable table of the sixth edition of the A.M.A., *Guides*. In a May 12, 2011 decision, an OWCP hearing representative found that appellant was not entitled to an increased schedule award. The Board finds that appellant has not met her burden of proof to establish that she has impairment of her lower left extremity greater than the one percent already awarded.

In a February 24, 2010 medical report, Dr. Suh concluded that appellant had reached maximum medical improvement. He evaluated her impairment pursuant to Table 16-2, the Foot and Ankle Regional Grid and opined that, based on the category of soft tissue, contusion/crush injury and per the criteria of significant consistent palpatory findings assigned to class 1, she had a mid-range value of one percent permanent impairment of the lower left extremity. The Board has held that the opinion of a chiropractor, regarding a permanent impairment of a scheduled extremity or other member of the body is beyond the scope of the statutory limitation of a chiropractor's services.⁸

OWCP referred the record to an OWCP medical adviser for review. On May 24, 2010 the medical adviser reviewed Dr. Suh's February 24, 2010 report and found that appellant had reached maximum medical improvement and had a one percent permanent impairment rating for the lower left extremity, pursuant to Table 16-2 of the A.M.A., *Guides*. In accordance with the sixth edition of the A.M.A., *Guides*, the medical adviser stated that, based on the diagnosis of category "soft tissue" with "consistent palpatory findings," appellant received a class 1 with mid-range default value of one percent lower extremity impairment. For the adjustment grids of functional history, appellant received a grade modifier 1 for examination and modifier 0 for clinical history, which corresponded to the net adjustment of negative 1 and grade B impairment

⁶ *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

⁷ *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

⁸ See *Pamela K. Guesford*, 53 ECAB 726 (2002).

of one percent. The Board finds that the medical adviser properly applied the standards of the A.M.A., *Guides* to reach his conclusion that she sustained a one percent permanent impairment to the left lower extremity.

In support of her request for additional impairment, appellant submitted a February 4, 2011 medical report from Dr. Suh, which noted a seven percent impairment of the whole person. Dr. Suh diagnosed scar conditions secondary to surgery for the crushing injury and noted that daily activities such as bathing and dressing were frequently interrupted due to scar irritation, but only to a minimal degree as the area involved about one percent of body surface area. He noted that ratings began at class 1 at five percent and increased by 1 step because the physical examination findings were considered to be in class 2 due to involvement of the medial side of the left calf and Achilles tendon area which is difficult or impossible to conceal with short pants or skirts.

The Board finds that Dr. Suh's February 4, 2011 report is not sufficient to establish that appellant has more than a one percent permanent impairment of the lower left extremity. As noted, a chiropractor's opinion regarding the degree of permanent impairment is of no probative value. It is beyond the scope of practice recognized under FECA. A chiropractor is limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.⁹ There is no statutory basis for the payment of a schedule award for whole body impairment under FECA. Payment is authorized only for the permanent impairment of specified members, organs or functions of the body.

Additionally, this February 24, 2011 report indicated that appellant was entitled to a schedule award based upon skin disfigurement and a scar on the left leg. However, under 5 U.S.C. § 8107(c)(21), a schedule award for disfigurement is limited to the face, head or neck. FECA makes no provision for scarring or disfigurement of any other part of the body.¹⁰ The record establishes that appellant's work-related scars are located on her left leg. The Board finds that she is not entitled to an award for scarring or disfigurement of her leg.¹¹

Accordingly, the Board finds that the medical adviser correctly applied the A.M.A., *Guides* to find that appellant had one percent permanent impairment of the left leg, for which she had received a schedule award. Appellant has not submitted sufficient evidence to establish that she has more than one percent impairment to the lower left extremity.

⁹ See *Paul Foster*, 56 ECAB 208 (2004).

¹⁰ The Board notes that OWCP issued revised regulations effective as of August 29, 2011. The new regulations provide that, pursuant to the authority provided by 5 U.S.C. § 8107(c)(22), skin has been added to the list of schedule members for which FECA provides compensation for loss. A schedule award for skin may be paid for injuries sustained on or after September 11, 2001. 20 C.F.R. § 10.404. As OWCP's decision on appeal was issued on May 12, 2011, the new regulations do not apply to appellant's claim. Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

¹¹ See *William Tipler*, 45 ECAB 185 (1993); *Norma Jean Polen*, 24 ECAB 64 (1972) (finding no award payable for disfigurement of the breast, abdomen, thighs or right arm).

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 established that she has more than a one percent permanent impairment of the left lower extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated May 12, 2011 is affirmed.

Issued: June 25, 2012
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