United States Department of Labor
Employees' Compensation Appeals Board

C.G., Appellant	)	
and	)	**Docket No. 12-288**
	)	**Issued: June 21, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Orangeburg, SC, Employer	)	

Appearances:
Jeffrey P. Zeelander, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 16, 2011 appellant, through his representative, filed a timely appeal from a November 7, 2011 schedule award decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 has more than a two percent impairment of the right leg, for which he received a schedule award.

On appeal, counsel requests that the Board review the November 7, 2011 schedule award determination and proceed to a decision.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on or before July 12, 2007 appellant, then a 31-year-old city carrier, sustained plantar fibromatosis of the right foot with an aggravation, capsulitis of the right foot and enesopathy of the right ankle and tarsus.

On December 3, 2007 Dr. Kevin L. Ray, an attending podiatrist, performed a metatarsal osteotomy of the third metatarsal of the right foot to correct a plantar flexed third metatarsal. In a January 14, 2008 report, he noted treating appellant since July 2007 for capsulitis secondary to a plantar flexed metatarsal. Walking at work had worsened appellant's condition, resulting in surgical correction. Following the surgery, he remained off work through March 29, 2008. Appellant received appropriate wage-loss compensation.

Appellant returned to light-duty work on March 30, 2008. OWCP accepted a recurrence of total disability commencing June 6, 2008. Appellant received total disability compensation through July 29, 2008. He returned to part-time work on July 30, 2008.[2] OWCP conducted additional development to determine appellant's work limitations.[3]

On April 27, 2009 appellant claimed a schedule award.

A June 18, 2009 nerve conduction velocity study showed decreased amplitude in the right superficial peroneal nerve, possibly due to surgery. In a June 29, 2009 note, Dr. Ray opined that appellant had reached maximum medical improvement.

On September 13, 2011 OWCP referred appellant, a statement of accepted facts and the medical record to Dr. James Bethea, a Board-certified orthopedic surgeon, for an impairment rating.[4]

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[2] Appellant claimed total disability compensation from April 28 to September 11, 2009. OWCP denied compensation by decision dated August 17 and November 24, 2009 on the grounds that the evidence did not establish total disability for the claimed period. Counsel requested reconsideration in August 17 and October 9, 2009 and June 17, 2010 letters, asserting that the employing establishment withdrew appellant's light-duty position. By decisions dated February 1 and August 18, 2010, OWCP denied modification on the grounds of insufficient evidence. These decisions are not before the Board on the present appeal.

[3] Dr. Ray submitted reports from August 17, 2008 to April 14, 2009 restricting appellant to sedentary duty, with no walking or driving. On November 25, 2008 OWCP obtained a consulting opinion from Dr. David K. Lee, who found appellant able to walk for two hours a day. It found a conflict of medical opinion between Drs. Ray and Lee. On July 13, 2009 OWCP obtained an impartial medical opinion from Dr. William Lehman, Jr., a Board-certified orthopedic surgeon, who recommended a functional capacity evaluation. A December 22, 2009 functional capacity evaluation demonstrated that appellant could perform full-time sedentary work. Dr. Lehman provided permanent restrictions on February 14, 2010, limiting appellant to sedentary work with walking limited to two hours a day and a 10-minute break after each 20 minutes of work.

[4] OWCP initially obtained a July 6, 2009 impairment rating from Dr. Gregory M. Jones, a Board-certified physiatrist and second opinion physician, who found a 13 percent impairment of the right lower extremity. Its medical adviser reviewed the report and requested clarification. OWCP requested a supplemental report from Dr. Jones on June 23, 2011 but he did not respond.

In an October 7, 2011 report, Dr. Bethea reviewed the medical record and a statement of accepted facts. On examination of the right foot, he noted bunionectomy and osteotomy scars. Dr. Bethea obtained x-rays showing healed osteotomies of the first and third metatarsals of the right foot with retained hardware. He noted that the third metatarsal was longer than the other metatarsals. Dr. Bethea diagnosed capsulitis/plantar fibromatosis of the right foot. Referring to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A. *Guides*), he found that, according to Table 16-2, page 501,[5] appellant had a class 1 soft tissue condition, with a default value of one percent lower extremity impairment. Appellant completed a lower limb questionnaire indicating a moderate impairment. Dr. Bethea opined that appellant's clinical studies demonstrated a moderate problem due to residuals of the metatarsal osteotomy. He determined that, according to the Adjustment Grid, appellant had a two percent impairment of his lower extremity.

In an October 28, 2011 report, OWCP's medical adviser opined that appellant had reached maximum medical improvement as of July 6, 2009. He found that Dr. Bethea properly utilized the A.M.A., *Guides* in rating two percent impairment of the right leg.

By decision dated November 7, 2011, OWCP granted appellant a schedule award for two percent impairment of the right leg. The period of the award ran from July 6 to August 15, 2009.

LEGAL PRECEDENT

The schedule award provisions of FECA[6] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[7] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.[8]

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).[9] Under the sixth edition, the evaluator identifies the impairment class for the

[5] Table 16-2, page 501 of the sixth edition of the A.M.A., *Guides* is titled "Foot and Ankle Regional Grid (LEI)." Soft tissue conditions include "plantar fasciitis, plantar fibromatosis; symptomatic soft tissue mass … retrocalcaneal bursitis."

[6] 5 U.S.C. § 8107.

[7] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[9] A.M.A., *Guides* (6th ed. 2008), page 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

ANALYSIS

OWCP accepted that appellant sustained plantar fibromatosis and capsulitis of the right foot and enesopathy of the tight ankle and tarsus. Appellant underwent a third metatarsal osteotomy on December 3, 2007. He claimed a schedule award on April 27, 2009. Dr. Ray, an attending podiatrist, found that appellant had reached maximum medical improvement as of June 29, 2009.

On October 7, 2011 OWCP obtained an impairment rating from Dr. Bethea, a Board-certified orthopedic surgeon, who reviewed the medical record and statement of accepted facts provided for his use. Dr. Bethea conducted a thorough clinical examination and provided detailed clinical findings. He referred to the Foot and Ankle Regional Grid at page 401 of the sixth edition of the A.M.A., *Guides* to determine a class 1 diagnosis-based impairment CDX for a soft tissue condition of the right foot due to the accepted plantar fibromatosis, equaling one percent impairment of the right lower extremity. Dr. Bethea determined that modifiers for GMPE and GMCS were not warranted referring to the Adjustment Grid at page 406 of the A.M.A., *Guides*, he assessed a grade modifier for functional history of 2 for moderate, chronic postsurgical problems, equaling an additional one percent impairment. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), this resulted in two percent impairment of the right leg. Therefore, OWCP's November 7, 2011 schedule award determination was appropriate under the law and facts of this case. There is no current medical evidence of record, in conformance with the A.M.A., *Guides*, that supports any greater impairment.

On appeal, counsel requests that the Board review the November 7, 2011 schedule award determination and "proceed to a decision." As stated above, the Board finds that OWCP's November 7, 2011 decision was proper under the law and facts of the case. 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 he sustained more than a two percent impairment of the right lower extremity, for which he received a schedule award.

[10] *Id*. at 494-531.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 7, 2011 is affirmed.

Issued: June 21, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board