

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

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<b>T.G., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 12-1147</b>
	)	<b>Issued: November 20, 2012</b>
<b>U. S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Rochester, NY, Employer</b>	)	
_____	)	

*Appearances:*  
David Covino, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 2, 2012 appellant, through her representative, filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) schedule award decision dated March 12, 2012. 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 schedule award determination.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she has more than a 37 percent permanent impairment of her right leg.<sup>2</sup>

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

<sup>2</sup> The March 12, 2012 decision found that appellant had no more than 37 percent impairment of the right leg and no more than 15 percent impairment of the right eye. On appeal, appellant's counsel appealed only from the right leg impairment rating. Therefore, the Board will not address the right eye impairment.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> In an August 24, 2010 decision, the Board found that the case was not in posture for decision regarding whether appellant had more than 10 percent impairment of the right leg. The Board found that OWCP should have conducted further medical development and remanded the case for a medical opinion on the nature and extent of her permanent impairment. The facts and the history contained in the prior appeal are incorporated by reference. The relevant facts include that the claim was accepted for fractured pelvis, fractured right ankle, as well as eye and facial trauma.

By letter dated November 18, 2010, OWCP referred appellant for a second opinion, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Charles E. Jordan, a Board-certified orthopedic surgeon.

In a report dated December 9, 2010, Dr. Jordan described appellant's history of injury and treatment and examined her. He utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (6<sup>th</sup> ed. 2009) and provided findings for the right lower extremity. For the right hip, Dr. Jordan determined that appellant had a 29 centimeter (cm) incision with diffuse local tenderness over the buttocks and sacroiliac area and no significant tenderness over the trochanter. He determined that she had full extension and flexion to 95 degrees, abduction of 25 degrees, adduction of 10 degrees, external rotation of 40 degrees and internal rotation of 10 degrees. Dr. Jordan referred to the Hip Regional Diagnostic Grid, Table 16-4.<sup>4</sup> He stated that a significantly displaced acetabular fracture, resulted in a class 3. Dr. Jordan noted that appellant's functional history grade modifier was 1, her physical examination grade modifier was 2 and the clinical studies grade modifier was 1. He explained that the default value of 37 resulted in a shift to a grade A level, with a percentage loss of 31. For the right foot, Dr. Jordan noted two well-documented one cm incisions, one medial and one lateral in the area of the mid foot, minimal local tenderness and slight stiffness in the mid foot, slight loss of motion in the ankle with five degrees of dorsiflexion and 45 degrees of plantar flexion, good subtalar motion, normal sensory and motor function to the forefoot and normal motion in the toes. He referred to Table 16-2 for Lisfranc dislocation and determined that appellant fell into a class 1, functional history level 1 and physical examination level 1. Dr. Jordan noted that clinical studies were not available which would be class 0. He explained that, after making the appropriate adjustments, appellant was a grade level B with a lower extremity percentage of six percent. Dr. Jordan explained that, when multiple assessments were made to the same extremity, it was recommended that Table 16-10 be used as 6 percent loss of the foot would then translate as a secondary impairment and be changed to 4 percent for a total combined of the lower extremity impairment of 35 percent.<sup>5</sup> He opined that appellant reached maximum medical improvement on March 21, 2005, when Dr. Linda Karbonit, an osteopath, provided the last impairment examination.

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<sup>3</sup> Docket No. 09-1856 (issued August 24, 2010).

<sup>4</sup> A.M.A., *Guides* 514.

<sup>5</sup> *Id.* at 530.

In a January 31, 2011 report, an OWCP medical adviser noted appellant's history of injury and treatment and utilized the findings provided by Dr. Jordan. The medical adviser concurred with Dr. Jordan's findings of 31 percent for the hip utilizing the Hip Regional Diagnostic Grid at Table 16-4.<sup>6</sup> However, he advised that appellant had greater impairment for the ankle/foot condition. The medical adviser noted that when referring to Table 16-2 for the Foot/Ankle Regional Diagnostic Grid,<sup>7</sup> Dr. Jordan utilized the diagnosis of Lisfranc and obtained a class 1 with a default impairment value of seven percent. For clinical studies, he did not provide a value because there were no clinical studies available. The medical adviser disagreed explaining that appellant qualified for a modifier of one as there must have been x-rays to show the Lisfranc dislocation before the percutaneous pinning was done. He explained that Dr. Jordan had a net modifier adjustment of -1 which made the default value (DV) of seven go to the left to six percent for the right foot. The medical adviser noted that Dr. Jordan utilized the conversion table and got 4 percent for the left lower extremity and then added (31 +4) which resulted in 35 percent for the right leg. He explained that this was not correct as the six percent value was for the leg, not the foot, such that no conversion was needed. The medical adviser indicated that using the GMCS of 1 resulted in net adjustment of 0 not -1 as indicated by Dr. Jordan. He explained that the DV of seven stayed at seven percent impairment of the leg according to Table 16-2.<sup>8</sup> OWCP's medical adviser utilized the Combined Values Chart and explained the total impairment of 31 percent for the hip and 7 percent for the foot when combined was equal to 37 percent of the right lower extremity.<sup>9</sup>

By decision dated June 6, 2011, OWCP granted appellant a schedule award for 37 percent permanent impairment of the right leg. As appellant previously received an award of 10 percent for the right leg, the additional award was for 27 percent.

In a letter dated January 19, 2012, appellant's counsel requested reconsideration. He argued that the medical adviser's calculation of the schedule award was a result of "sloppy arithmetic" and that appellant had 38 percent impairment of the right leg.<sup>10</sup>

In a March 12, 2012 decision, OWCP denied modification of the prior decision. It found that the medical evidence did not support increased impairment.

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<sup>6</sup> See *supra* note 4.

<sup>7</sup> A.M.A., *Guides* 504.

<sup>8</sup> *Id.*

<sup>9</sup> A.M.A., *Guides* 604.

<sup>10</sup> Counsel also inquired about a schedule award for facial disfigurement. This matter is not presently before the Board.

## LEGAL PRECEDENT

The schedule award provision of FECA<sup>11</sup> and its implementing federal regulations,<sup>12</sup> 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>13</sup> For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>14</sup> For decisions issued after May 1, 2009, the sixth edition will be used.<sup>15</sup>

In addressing lower extremity impairments, the sixth edition requires identifying 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).<sup>16</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>17</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.<sup>18</sup>

## ANALYSIS

The sixth edition of the A.M.A., *Guides* provides that lower extremity impairments be classified by diagnosis which is then adjusted by grade modifiers according to the formula noted above.<sup>19</sup> Appellant's accepted conditions include a fractured pelvis and right ankle. On June 26, 2011 she was granted a schedule award for 37 percent permanent impairment of the right lower extremity.

The Board notes that both Dr. Jordan and the medical adviser discussed the relevant tables in the sixth edition of the A.M.A., *Guides*. The Board notes that Dr. Jordan opined that

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<sup>11</sup> 5 U.S.C. § 8107.

<sup>12</sup> 20 C.F.R. § 10.404.

<sup>13</sup> *Id.* at § 10.404(a).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>15</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>16</sup> A.M.A., *Guides* 494-531; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

<sup>17</sup> A.M.A., *Guides* 521.

<sup>18</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

<sup>19</sup> *See supra* note 17.

appellant was entitled to an impairment of 35 percent to the right lower extremity but the medical adviser utilized his findings to conclude that appellant was actually entitled to 37 percent of the right lower extremity. The discrepancy appeared in relation to the calculation of the right foot ankle. Both Dr. Jordan and the medical adviser referred to Table 16-2, Foot and Ankle Regional Grid.<sup>20</sup> The medical adviser explained that Dr. Jordan, when referring to Table 16-2, properly utilized the diagnosis of Lisfranc dislocation with a class 1 DV of seven percent. However, in applying the net adjustment formula, he opined that the rating should move one place to the left for six percent impairment of the foot as there were no clinical studies available. The medical adviser explained that appellant would qualify for at least a clinical studies modifier of 1, as there must have been x-rays to show the Lisfranc dislocation before the percutaneous pinning was done. With a clinical studies modifier of one, he utilized the net adjustment formula and found no net adjustment from the DV of seven percent impairment. The medical adviser further explained that Table 16-2 provided for lower extremity impairment, not foot impairment such that there was no need to convert foot impairment to leg impairment.<sup>21</sup>

The medical adviser concurred with Dr. Jordan's findings related to the hip. As noted above, both physicians referred to Chapter 16, the Hip Regional Diagnostic Grid, Table 16-4.<sup>22</sup> The medical adviser and Dr. Jordan indicated that due to, a significantly displaced acetabular fracture, appellant fell into a class 3 category with a default value of 37. They applied the grade modifiers for functional history 1, physical examination 2 and clinical studies 1, to the net adjustment formula and determined that she had a net adjustment of 5 which moved the default grade C to grade A for 31 percent impairment.

The medical adviser utilized the Combined Values Chart to combine the values for the hip and lower extremity and determined that the 31 percent for the hip and 7 percent for the foot/ankle region yielded 37 percent of the right leg impairment. However, the Board notes that the two values combine to yield 36 percent impairment.<sup>23</sup>

The Board finds that OWCP's medical adviser otherwise properly applied the A.M.A., *Guides* to rate impairment to appellant's right lower extremity. The medical adviser reviewed the medical evidence and fully explained how he determined appellant's rating and why the rating of Dr. Jordan with regard to the right lower extremity was not in conformance with the A.M.A., *Guides*. There is no medical evidence conforming with the A.M.A., *Guides* that supports greater impairment.

On appeal, appellant's counsel contended that appellant was entitled to 38 percent impairment to the right lower extremity. However, the values are not added but are combined using the Combined Values Chart. Thirty-one percent combined with 7 percent yields 36 percent.<sup>24</sup>

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<sup>20</sup> *Supra* note 7.

<sup>21</sup> *Id.*

<sup>22</sup> A.M.A., *Guides* 514.

<sup>23</sup> *Supra* note 9.

<sup>24</sup> *See id.* *See also* A.M.A., *Guides* 20 (Table 2-1) (all regional impairments in the same organ or body system

Appellant 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 or increased impairment.

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she has more than a 37 percent permanent impairment of her right lower extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2012  
Washington, DC

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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

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shall be combined); A.M.A., *Guides 22* (provides that various organ systems can be accounted for with one numerical value using the Combined Values Chart which is based on the idea that a second or a succeeding impairment should apply not to the whole but only to the part that remains after the first and other impairments have been applied; multiple impairments are to be combined using the Combined Values Chart).