United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 13-214**
	)	**Issued: August 15, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Carol Stream, IL, 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
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 7, 2012 appellant filed a timely appeal from a May 21, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for an increased schedule award. 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 schedule award decision.

ISSUE

The issue is whether appellant has more than a 16 percent permanent impairment of the left leg.

FACTUAL HISTORY

On December 14, 2000 appellant, then a 31-year-old mail carrier, filed a traumatic injury claim alleging that on December 12, 2000 she injured her left foot when she twisted her ankle walking down stairs. OWCP accepted the claim for left ankle sprain, an aggravation of

[1] 5 U.S.C. § 8101 *et seq.*

traumatic arthropathy and an aggravation of other enthesopathy of the ankle and tarsal.[2] Appellant underwent a left triple arthrodesis on June 4, 2004. On May 19, 2006 Dr. George B. Holmes, a Board-certified orthopedic surgeon, performed an arthrodesis of nonunion of the calcaneocuboid joint, a removal of hardware, a bone graft and tenolysis of the peroneal tendons.

On August 30, 2007 appellant filed a claim for a schedule award. By decision dated September 25, 2008, OWCP granted her a schedule award for a 16 percent permanent impairment of the left leg. It issued an amended decision on December 18, 2008 clarifying that the period of the award was from July 8, 2008 to May 26, 2009.

In a September 23, 2011 impairment rating, Dr. Jacob Salomon, a Board-certified surgeon, discussed appellant's history of a December 12, 2000 work injury and subsequent ankle fusion and triple arthrodesis with a bone graft on May 19, 2006. He stated, "Since her surgery, she has had chronic left ankle pain and swelling with decreased range of motion on evaluation. She wears a permanent foot brace to stabilize her ankle while walking. Evaluation by physical therapy reveals [five] degrees difference from her left foot to right foot for varus…." Using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Salomon identified the diagnosis as a class 3 triple arthrodesis with malalignment based on his findings on physical examination, which yielded a default impairment value of 30 percent pursuant to Table 16-2 on page 508. He applied a grade modifier of three for physical examination due to her difficulty walking, a grade modifier of two for loss of range of motion in her physical examination and a grade modifier of two for clinical studies as x-rays showed metallic hardware in the cuboid talus and calcaneum bone but no focal lesions. After applying the net adjustment formula, Dr. Salomon moved the default value of 30 two places to the left to find a total left lower extremity impairment of 26 percent.

On February 26, 2012 an OWCP medical adviser reviewed Dr. Salomon's report and noted that Dr. Holmes found that appellant's x-rays showed a solid triple arthrodesis with no indication of any alignment problems.[3] He identified the diagnosis as a triple arthrodesis in neutral position, which yielded a default grade of 10 percent. The medical adviser applied a grade modifier of two for functional history as appellant wore a brace and a grade modifier of one for physical examination. He utilized the net adjustment formula which moved the default rating one to the right, for a 12 percent impairment. The medical adviser stated, "This differs from Dr. Salomon's rating because he has rated her as malaligned when previous documents show neutral alignment of the fusion. If there continues to be a question, then new [x]-rays are warranted…."

By decision dated April 12, 2012, OWCP denied appellant's claim for an increased schedule award.

[2] In a decision dated October 15, 2001, OWCP determined that appellant had not established that she sustained a recurrence of disability on January 15, 2001 due to her December 12, 2000 work injury.

[3] An x-ray of appellant's left foot, performed at the request of Dr. Salomon on September 8, 2011, showed an [o]pen reduction internal fixation done of talus, calcaneum, cuboid and navicular bones with metallic clips and a screws" with no focal lesions. The "overall osseous alignment" was within normal limits.

On May 4, 2012 appellant requested reconsideration. She submitted a magnetic resonance imaging (MRI) scan study of the left ankle dated March 19, 2011 and x-rays of her left foot dated September 8, 2011.

By decision dated May 21, 2012, OWCP denied modification of its April 4, 2012 decision.

On appeal appellant argues that her physicians found that she had a greater impairment than awarded.

LEGAL PRECEDENT

The schedule award provision of FECA,[4] and its implementing federal regulations,[5] 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.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

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

ANALYSIS

OWCP accepted that appellant sustained left ankle sprain, an aggravation of traumatic arthropathy and an aggravation of other enthesopathy of the ankle and tarsal. On June 4, 2004 appellant underwent a left triple arthrodesis and on May 19, 2006 she underwent an arthrodesis to repair a nonunion of the calcaneocuboid joint, a bone graft and tenolysis of the peroneal tendons. In a decision dated September 25, 2008, OWCP granted her a schedule award for a 16 percent permanent impairment of the left upper extremity.

On September 23, 2011 Dr. Salomon reviewed appellant's history of injury and surgeries and discussed her complaints of continued left ankle swelling, pain, loss of motion and need for a permanent foot brace. He found that she had five degrees of varus on the left foot as opposed to

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id*. at § 10.404(a).

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

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

the right as measured during physical therapy. Applying Table 16-2 of the sixth edition of the A.M.A., *Guides*, Dr. Salomon identified the diagnosis as a class 3 nonunion of the fracture with triple arthrodesis and ankle malalignment, which yielded a default impairment rating of 30 percent. He applied a grade modifier of three for functional history (Table 16-6, 516) due to appellant's limitation in walking, her ankle pain and her need for a brace. Dr. Salomon determined that she had a grade modifier of two for physical examination (Table 16-7, 517) due to her loss of range of motion and a grade modifier of two for clinical studies (Table 16-8, 519) based on x-rays showing an internal fixation with no focal lesions. He applied the net adjustment formula, (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) or (3-3) + (2-3) + (2-3) = -2, and found that it moved the default value two spaces to the left, for a 26 percent total impairment of the left lower extremity.

An OWCP medical adviser reviewed Dr. Salomon's impairment evaluation and found that x-rays showed a solid fusion. He determined that appellant had a class 1 impairment under Table 16-2 for a triple arthrodesis in neutral position, which yielded a default value of 10 percent. The medical adviser applied a grade modifier of two for functional history as she wore a brace, and a grade modifier of one for physical examination findings. After utilizing the net adjustment formula, he concluded that appellant had a 12 percent permanent impairment of the left lower extremity. The medical adviser related that his rating varied from Dr. Salomon because Dr. Salomon found a misalignment but he found that x-rays showed a "neutral alignment of the fusion." He recommended additional x-rays if a question arose regarding the alignment of the fusion.

The Board finds that the case is not in posture for decision. OWCP's medical adviser found that appellant had no malalignment based on x-ray evidence while Dr. Salomon found malalignment based on physical examination. The A.M.A., *Guides* provides that alignment can be determined "clinically and/or on the basis of radiographic studies; specific parameters may vary by region."[9] Table 16-2 states that the diagnosis of arthrodesis is not used "with [clinical studies] [x]-ray malalignment."[10] Neither Dr. Salomon nor OWCP's medical adviser provided adequate rationale for their conclusions regarding the extent of appellant's ankle alignment. The Board, consequently, finds that there is insufficient opinion on appellant's impairment rating consistent with the A.M.A., *Guides*. The case will be remanded for further development of the medical evidence. On remand, OWCP should obtain an opinion from a second opinion examiner regarding the extent of appellant's left lower extremity impairment under the sixth edition of the A.M.A., *Guides*. Following any necessary further development, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

[9] *Id*. at 517.

[10] *Id*. at 508, Table 16-2.

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: August 15, 2013
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