

FACTUAL HISTORY

OWCP accepted that appellant, then a 41-year-old city letter carrier, sustained bilateral plantar fibromatosis due to factors of his federal employment.² It authorized foot surgery which he underwent on July 5, 2007. Appellant returned to part-time work on September 25, 2007 and then returned to full duty on October 27, 2007.

On December 20, 2007 appellant filed a claim for a schedule award and submitted an October 11, 2006 report from Dr. Robert LaReaux, a podiatrist, who diagnosed bilateral plantar fasciitis.

By letter dated December 31, 2007, OWCP notified appellant that his claim for a schedule award could not be considered as the evidence of record did not indicate that his condition had reached a state of maximum medical improvement.

Subsequently, appellant submitted reports from Dr. LaReaux dated September 10, 2007 through May 26, 2008 reiterating his diagnosis.

On June 23, 2009 appellant filed another schedule award claim.

By letter dated July 7, 2009, OWCP notified appellant that his claim could not be considered as the evidence submitted failed to indicate that his condition had reached maximum medical improvement.

Appellant submitted reports dated September 1 and November 24, 2009 from Dr. Ronald Kienitz, an osteopath Board-certified in occupational medicine, who diagnosed pain in joint involving lower leg and sprain of unspecified site of knee and leg and released her to work with restrictions.

In a December 11, 2009 report, Dr. Terry Vernoy, an orthopedic surgeon, found minimal right knee changes on a December 8, 2009 magnetic resonance imaging (MRI) scan and diagnosed decreased right knee pain secondary to torn medial meniscus and hamstring strain. He advised appellant to continue light-duty work.

On December 7, 2011 Dr. LaReaux concluded that appellant had reached maximum medical improvement effective October 8, 2007.

By letter dated February 8, 2012, OWCP notified appellant of the deficiencies of his schedule award claim and afforded him 30 days for the submission of additional evidence.

In response, appellant submitted a February 29, 2012 report from Dr. LaReaux who saw appellant for an impairment rating. Dr. LaReaux conducted a physical examination of appellant and found that his ankle and bilateral rearfoot, midfoot and forefoot joints were stable to manual stress. Muscle strength for all prime movers of the lower leg, ankle and foot were graded at five out of five bilaterally for the lower extremities. Appellant had full, fluid range of motion for all

² On February 17, 2007 appellant filed a claim for compensation for the period February 14 to 16, 2007. By decision dated May 3, 2007, OWCP denied the claim on the basis that the evidence was not sufficient to establish disability for the period claimed.

joints from the ankle joint distal without pain, crepitation or instability in the bilateral lower extremities. Dr. LaReaux concluded that appellant had no permanent impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*).

By decision dated September 19, 2012, OWCP denied appellant's schedule award claim on the basis that the medical evidence did not establish a ratable impairment of a scheduled member.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim, including that he or she sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.³

The schedule award provision of FECA⁴ and its implementing regulations⁵ 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁷ It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.⁸ A schedule award is not payable under section 8107 of FECA for an impairment of the whole person.⁹

³ See e.g., *Bobbie F. Cowart*, 55 ECAB 476 (2004). In *Cowart*, the employee claimed entitlement to a schedule award for permanent impairment of her left ear due to employment-related hearing loss. The Board determined that appellant did not establish that an employment-related condition contributed to her hearing loss and, therefore, it denied her claim for entitlement to a schedule award for the left ear.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.*

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁸ See *Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(a)(3) (September 1995). This portion of OWCP procedures provide that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

⁹ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990).

A schedule award is not payable for a member, function or organ of the body not specified in FECA or in the implementing regulations.¹⁰ As neither FECA nor the regulation provide for the payment of a schedule award for the permanent loss of use of the back or spine, no claimant is entitled to such an award.¹¹ However, as FECA makes provision for the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originates in the spine, if the medical evidence establishes impairment as a result of the employment injury.¹²

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³

ANALYSIS

OWCP accepted appellant's claim for bilateral plantar fibromatosis. However, the Board finds that the medical evidence of record does not establish that he sustained permanent impairment to his lower extremities due to the accepted bilateral foot conditions.

In a February 29, 2012 report, Dr. LaReaux, appellant's attending podiatrist, found that appellant had no permanent impairment of a scheduled member under the sixth edition of the A.M.A., *Guides*. He properly conducted a physical examination and found no basis for rating impairment to a scheduled member of the body. Dr. LaReaux found that appellant's ankle and bilateral rearfoot, midfoot and forefoot joints were stable to manual stress. Muscle strength for all prime movers of the lower leg, ankle and foot were graded at five out of five bilaterally for the lower extremities. Appellant had full, fluid range of motion for all joints from the ankle joint distal without pain, crepitation or instability in the bilateral lower extremities. Dr. LaReaux concluded that appellant had reached maximum medical improvement effective October 8, 2007 and had no permanent impairment under the sixth edition of the A.M.A., *Guides*.

As the reports from Drs. Kienitz and Vernoy do not provide an impairment rating based on the sixth edition of the A.M.A., *Guides*, the Board finds that they lack probative value and are insufficient to establish appellant's claim.

¹⁰ See *Tania R. Keka*, 55 ECAB 354 (2004).

¹¹ See *id.* FECA itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

¹² See *George E. Williams*, 44 ECAB 530 (1993). In 1966, amendments to FECA modified the schedule award provision to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member.

¹³ See *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

Appellant did not submit sufficient medical evidence to establish that he sustained a permanent impairment to a specified member, organ or function of the body listed in FECA or its implementing regulations. Therefore, there was no medical evidence of lower extremity impairment resulting from the accepted conditions and, accordingly, there was no ratable impairment of a scheduled member under the sixth edition of the A.M.A., *Guides*. The Board finds that appellant is not entitled to a schedule award as a result of his accepted bilateral foot injuries.

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 any ratable lower extremity impairment related to his accepted bilateral foot injuries and, thus, he is not entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board