United States Department of Labor
Employees' Compensation Appeals Board

A.C., Appellant	)	
and	)	**Docket No. 13-1128**
	)	**Issued: July 22, 2013**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, Canaan, PA, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 9, 2013 appellant filed a timely appeal from the November 15, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which found a 10 percent permanent impairment of the left lower extremity. 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] Accompanying appellant's signed appeal request form was an April 3, 2013 letter from James J. Conaboy, Esquire. By letter dated April 12, 2013, the Clerk of the Board informed the attorney and appellant of the requirements of section 501.9(b) of the Board's *Rules of Procedure*, which states in part: "No individual may appear as a Representative in a proceeding before the Board without first filing with the Clerk a written authorization signed by [a]ppellant to be represented." 20 C.F.R. § 501.9(b). The letter requested that a signed authorization be submitted to the Board within 30 days of the date of the letter. The Board received no response within the time allotted. Accordingly, the Board may not recognize the attorney as appellant's authorized representative.

ISSUE

The issue is whether appellant has more than a 10 percent permanent impairment of his left leg as a result of the March 23, 2010 employment injury.

FACTUAL HISTORY

On March 23, 2010 appellant, a 28-year-old correctional officer, sustained a traumatic injury in the performance of duty during an immediate use of force on an aggressive inmate. OWCP accepted his claim for a closed trimalleolar fracture of the left ankle.

On March 26, 2010 appellant underwent an open reduction and internal fixation with a prophylactic fasciotomy. On April 19, 2011 he underwent surgical removal of deep implants in his left ankle and a chilectomy of the anterior distal tibia and anterior dorsal talus. X-rays obtained on October 31, 2011 revealed that hardware had been removed. The fractures of the distal fibula had healed without significant deformity. There was moderate remodeling. The ankle mortise was intact. The tibiotalar joint subtalar joint were normal. The impression was healed fractures, surgical hardware removed.

Appellant filed a claim for a schedule award. Dr. Jeffrey A. Mogerman, the attending Board-certified orthopedic surgeon, examined appellant on March 21, 2012. He explained that appellant had undergone surgery for a significantly displaced fracture of his left ankle, tolerated the procedure very well, but went on to develop chronic pain and limited motion, which Dr. Mogerman attributed to the development of post-traumatic arthritis. Following his second surgery, appellant continued to experience chronic pain, significantly limited motion, partial giving way, waxing and waning swelling and intermittent locking of his left ankle. He generally did not require assistive devices for ambulation.

Findings on physical examination included tenderness at the anterior and posterior aspects of the left ankle. Dorsiflexion was 10 degrees, compared to 40 on the right. Plantar flexion was 25 degrees, compared to 40. There was also limitation of talar motion. No other acute findings were noted. Dr. Mogerman concluded that appellant had a 15 percent impairment of the left lower extremity under the sixth edition of the A.M.A., *Guides*.

On April 15, 2012 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and an OWCP medical adviser, reviewed Dr. Mogerman's rating. He found that appellant had a 10 percent impairment of his left lower extremity due to a trimalleolar fracture with mild motion deficit. Dr. Berman reviewed the adjustment grid grade modifiers for functional history, physical examination or clinical studies. He noted a net adjustment of zero (0) based on Dr. Mogerman's report.

On November 15, 2012 OWCP issued a schedule award for a 10 percent impairment of appellant's left lower extremity.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and the implementing regulations[4] set forth the number of weeks of compensation payable to employees who sustain permanent impairment from loss or loss of use of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage of loss shall be determined. The method used to make such a determination is a matter that rests within the sound discretion of OWCP.[5]

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. OWCP has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

Diagnosis-based impairment is the primary method of evaluating the lower extremity under the sixth edition of the A.M.A., *Guides*. Impairment is determined first by identifying the relevant diagnosis, then by selecting the class of the impairment (no objective problem, mild problem, moderate problem, severe problem, very severe problem approaching total function loss). This provides the default impairment rating. The default impairment rating can be adjusted up or down slightly for grade, which is calculated using grade modifiers or nonkey factors (functional history, physical examination, clinical studies).[8]

ANALYSIS

Table 16-2, the Foot and Ankle Regional Grid -- Lower Extremities, shows the impairment values for a variety of diagnoses. Trimalleolar ankle fracture is found on page 503. Motion deficits determine whether appellant's diagnosis should be classified as mild or moderate. Dr. Mogerman, the attending orthopedic surgeon, found 10 degrees of dorsiflexion, which, according to Table 16-22, page 549 of the A.M.A., *Guides*, represents a mild motion impairment of seven percent. He also found 25 degrees of plantar flexion, which represents no motion impairment. Added together, these values are consistent with a class 1 impairment under Table 16-25, page 550.[9]

---

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

[6] *Supra* note 4.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010).

[8] A.M.A., *Guides* 497 (6th ed. 2009).

[9] Dr. Mogerman noted a limitation of talar motion, but he offered no measurement.

The default lower extremity impairment rating for a class 1 trimalleolar fracture is 10 percent. As appellant generally did not require assistive devices for ambulation, his functional history is classified as mild under Table 16-6, page 516 of the A.M.A., *Guides*. With mild ankle motion deficits, his physical examination is classified as mild under Table 16-7, page 517.[10] Clinical studies showing healed fracture without significant deformity are classified as mild under Table 16-8, page 519. As the relevant grade modifiers are consistent with a class 1 impairment, no adjustment of the default impairment value is warranted. Appellant's final impairment rating was 10 percent, as determined by Dr. Berman.

Accordingly, the Board finds that appellant has no more than a 10 percent impairment of his left lower extremity as a result of the March 23, 2010 employment injury. The Board will affirm the November 15, 2012 schedule award.

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 no more than a 10 percent permanent impairment of his left lower extremity as a result of the March 23, 2010 employment injury.

[10] As range of motion on physical examination was used to classify appellant's diagnosis, it may not be used again to modify the default impairment value. A.M.A., *Guides* 515-16.

ORDER

IT IS HEREBY ORDERED THAT the November 15, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2013
Washington, DC

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

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

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