

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

---

**T.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Grand Rapids, MI, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 13-281  
Issued: March 22, 2013**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On November 20, 2012 appellant, through his attorney, filed a timely appeal from an October 25, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 decision.

**ISSUE**

The issue is whether appellant has more than a 70 percent permanent impairment of the right lower extremity.

**FACTUAL HISTORY**

On May 6, 2004 appellant, then a 57-year-old review clerk, filed a traumatic injury claim alleging that on May 2, 2004 he fractured his heel when he fell down stairs. OWCP accepted the

---

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

claim for a right comminuted calcaneus fracture, a postoperative infection, chronic osteomyelitis and a traumatic unilateral amputation of the leg.

Appellant underwent surgery on June 1, 2004 to repair the fracture. Following the surgery he developed osteomyelitis. On December 11, 2004 appellant underwent an amputation below the right knee.

In an impairment evaluation dated January 31, 2006, Dr. Perry W. Greene, Jr., an orthopedic surgeon and OWCP referral physician, found that appellant had “an amputation of his right leg seven inches below the knee on the right side” as a result of his employment injury. He determined that, according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) (A.M.A., *Guides*), appellant had a 28 percent permanent impairment. On June 4, 2006 an OWCP medical adviser reviewed Dr. Greene’s report and found that appellant had a 70 percent permanent impairment of the lower extremity.

By decision dated June 30, 2006, OWCP granted appellant a schedule award for a 70 percent permanent impairment of the right lower extremity. The period of the award ran for 201.60 weeks from January 31, 2006 to December 12, 2009.

In a November 16, 2010 impairment evaluation, Dr. William N. Grant, a Board-certified internist, discussed appellant’s history of injury and noted that he had a below-knee amputation on the right side. He diagnosed right peripheral vascular disease, klebsiella pneumonia, a right amputation, a closed fracture of the calcaneus, right postoperative wound infection, a right open wound on the foot, right ankle joint pain and chronic osteomyelitis of the right ankle. Citing the sixth edition of the A.M.A., *Guides*, Dr. Grant identified the diagnosis as a class 4 amputation under Table 16-16 on page 542. He applied grade modifiers of 4 for Functional History (GMFH) and Physical Examination (GMPE) to find no net adjustment. Dr. Grant concluded that appellant had an 80 percent impairment of the right lower extremity “based on his history, inclusive of multiple surgeries, postop[erative] wound infection and daily severe pain.”

On April 21, 2011 an OWCP medical adviser reviewed the medical evidence and noted that Dr. Grant applied the diagnosis set forth in Table 16-16 for an amputation three inches below the knee, which yielded a default value of 80 percent. He questioned the measurement for the amputation and noted that a standard amputation would be greater than three inches below the knee, which would yield a default value of 70 percent. OWCP’s medical adviser applied grade modifiers and found that appellant had a 70 percent permanent impairment of the right lower extremity.

By letter dated May 31, 2011, OWCP requested that appellant’s attorney provide additional information from Dr. Grant regarding the length of the amputation.

In a November 3, 2011 response, Dr. Grant opined that the A.M.A., *Guides* did not require a specific measurement. He advised that appellant had an 80 percent impairment of the right lower extremity.

On November 17, 2011 an OWCP medical adviser related that he was unable to provide the extent of an impairment rating without the measurement of appellant’s stump. He then concurred with the prior finding of a 70 percent lower extremity impairment rating.

By decision dated April 30, 2012, OWCP denied appellant's claim for an increased schedule award. It found that the evidence did not establish more than the previously awarded 70 percent impairment of the right lower extremity.

On May 4, 2012 appellant, through his attorney, requested a telephone hearing before an OWCP hearing representative. At the telephone hearing, held on August 15, 2012, his attorney argued that he had total loss of function due to his amputation and thus should receive a schedule award for a 100 percent loss of use of the leg.

By decision dated October 25, 2012, OWCP's hearing representative affirmed the April 30, 2012 decision.

### **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>2</sup> and its implementing federal regulations,<sup>3</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>4</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>5</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained a right comminuted calcaneus fracture, a postoperative infection, chronic osteomyelitis and a traumatic unilateral amputation of the leg below the right knee due to a May 2, 2004 employment injury. On June 30, 2006 it granted him a schedule award for a 70 percent permanent impairment of the right lower extremity. In decisions dated April 30 and October 25, 2012, it denied appellant's request for an additional schedule award after finding that the medical evidence did not support a greater impairment under the sixth edition of the A.M.A., *Guides*.

The Board finds that appellant is entitled to a schedule award for a 100 percent permanent impairment of the right lower extremity. Section 8107(c)(16) of FECA provides that, if an arm or leg is amputated above the wrist or ankle, compensation is the same as for loss of the arm or leg, respectively. Appellant underwent an amputation of his right leg below the knee that was causally related to his employment. Therefore, as the statute supersedes the A.M.A.,

---

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *Id.* at § 10.404(a).

<sup>5</sup> 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).

*Guides*, he is entitled to impairment equal to that of the loss of a leg.<sup>6</sup> OWCP's decision, consequently, is reversed and the case remanded for it to award appellant an additional 30 percent impairment of the right leg due to his leg amputation above the ankle.

**CONCLUSION**

The Board finds that appellant is entitled to a schedule award for a 100 percent impairment of the right lower extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 25, 2012 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 22, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

---

<sup>6</sup> 5 U.S.C. § 8107(c)(2), (c)(16); *see also* *Chris J. Stasinopoulos*, Docket No. 05-74 (issued June 23, 2005).