

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

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**R.H., Appellant**

**and**

**DEPARTMENT OF THE ARMY, U.S.  
MILITARY ACADEMY, West Point, NY,  
Employer**

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**Docket No. 13-1454  
Issued: November 4, 2013**

*Appearances:*  
*Paul Kalker, Esq., for the appellant*  
*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 May 31, 2013 appellant, through counsel, timely appealed the May 8, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which granted a schedule award. 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 merits of the schedule award claim.

**ISSUE**

The issue is whether appellant has greater than onepercent impairment of the right leg.

**FACTUAL HISTORY**

Appellant, a 65-year-oldretired small engine repairer/motor vehicle operator, has an accepted traumatic injury claim for a right foot contusion and right ankle abrasion. He was injured on October 30, 2009 when a portable light set weighing 300 to 400 pounds fell on his

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

right ankle trapping his foot underneath. Effective March 30, 2010, appellant returned to work in a light-duty capacity. He resumed his full-time regular duties on September 21, 2010. Appellant subsequently filed a claim (Form CA-7) for a schedule award.

In a May 12, 2011 report, Dr. Paul B. Atlas, a podiatrist, found 50 percent impairment of the right foot based on loss of range-of-motion of the ankle and subtalar joints. He found that appellant had reached maximum medical improvement. Dr. Atlas' 50 percent rating was based on New York State workers' compensation guidelines.

By letter dated July 1, 2011, OWCP advised appellant to have his treating physician submit an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*(2008).

Dr. Atlas provided a September 13, 2011 impairment rating. He diagnosed complex regional pain syndrome (CRPS) and found 13 percent right lower extremity impairment. Dr. Atlas referenced Table 16-2 and Table 16-12, of the A.M.A., *Guides* (6<sup>th</sup> ed. 2008).<sup>2</sup>

Dr. Henry J. Magliato, a district medical adviser, was unable to confirm that Dr. Atlas arrived at the 13 percent lower extremity impairment rating as Table 16-2 was a peripheral nerve impairment table and was not applicable. Dr. Magliato's diagnosis of CRPS was not represented under Table 16-2 or Table 16-12, A.M.A., *Guides* 501-08, 534-36 (6<sup>th</sup> ed. 2008), thus, it was unclear how Dr. Atlas rated appellant utilizing the referenced tables. He recommended that OWCP refer appellant for a second opinion evaluation by an orthopedic foot/ankle surgeon familiar with rating impairment under the A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

Dr. Joseph P. Laico, a Board-certified orthopedic surgeon and OWCP referral physician, examined appellant on March 6, 2013. He rated appellant for a soft tissue injury -- contusion -- under Table 16-2, A.M.A., *Guides* 501 (6<sup>th</sup> ed. 2008) which represented a class 1 (mild problem) impairment with a default rating "C" of one percent. Taking into account the adjustments and grade modifiers for Functional History (GMFH 1), Physical Examination (GMPE 1) and Clinical Studies (GMCS 1), Dr. Laico calculated a net adjustment of zero. He found a right lower extremity impairment of one percent.

On March 22, 2013 Dr. Magliato reviewed the record and concurred with Dr. Laico's one percent right lower extremity impairment rating.

On May 8, 2013 OWCP granted a schedule award for one percent impairment of appellant's right lower extremity. The award covered 2.88 weeks from March 6 to 26, 2013.

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<sup>2</sup> Dr. Atlas identified both Table 16-2 and Table 16-12 as "Foot and Ankle Regional" Grid (LEI). That is the correct designation for Table 16-2, but Table 16-12 is titled "Peripheral Nerve Impairment (LEI)." See A.M.A., *Guides* 501-08, 534-36 (6<sup>th</sup> ed. 2008).

## LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>3</sup> FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>4</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.<sup>5</sup>

## ANALYSIS

Appellant's claim was accepted for a right foot condition and ankle abrasion. He filed a claim for a schedule award. The Board notes that neither of Dr. Atlas' impairment ratings were in accordance with the A.M.A., *Guides* (6<sup>th</sup> ed. 2008). Dr. Atlas' May 12, 2011 assessment was based on New York State workers' compensation guidelines which are inapplicable to claims of federal employees under FECA. While he referenced the A.M.A., *Guides* (6<sup>th</sup> ed. 2008) in his September 13, 2011 report, the 13 percent impairment rating based on a diagnosis of chronic regional pain syndrome did not correspond with either of the identified tables<sup>6</sup> nor did the physician address any net modifiers.

Dr. Laico found that appellant had one percent impairment of the right lower extremity pursuant to Table 16-2, A.M.A., *Guides* 501 (6<sup>th</sup> ed. 2008). The rating was based on the diagnosis of a soft tissue injury --contusion --which represented a class (CDX) 1 impairment with a default grade "C" of one percent LEI. Factoring in grade modifiers for functional history one, physical examination one and clinical studies one, Dr. Laico found a net adjustment of zero. Therefore, no adjustment was made from the default value of one percent LEI.<sup>7</sup> Dr. Magliato concurred in his impairment rating as complying with the sixth edition of the A.M.A., *Guides*.

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<sup>3</sup> For a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (February 2013).

<sup>6</sup> See *supra* note 2. Impairment due to CRPS is addressed in Section 16.6 utilizing Table 16-13, Table 16-14 and Table 16-15, A.M.A., *Guides* 538-42 (6<sup>th</sup> ed. 2008).

<sup>7</sup> Net Adjustment = (GMFH 1 - CDX 1) + (GMPE 1 - CDX 1) + (GMCS 1 - CDX 1). See Section 16.3d, A.M.A., *Guides* 521 (6<sup>th</sup> ed. 2008).

The Board finds that the impairment rating of Dr. Laico and Dr. Magliato conform to the A.M.A., *Guides* (6<sup>th</sup> ed. 2008). It represents the weight of the medical evidence regarding the extent of appellant's right lower extremity impairment.

Appellant has not submitted any other medical evidence to establish that he has greater than one percent impairment of the right lower extremity. He 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**

Appellant failed to establish that he has greater than one percent impairment of the right lower extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 8, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 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