

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

L.B., Appellant

and

**DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
International Falls, MN, Employer**

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**Docket No. 14-1
Issued: April 2, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 30, 2013 appellant filed a timely appeal from an April 24, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has established greater than a three percent impairment of the left lower extremity, for which he received a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

² Accompanying his request for appeal, appellant submitted new medical evidence, including an impairment rating. The Board may not consider new evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case. 20 C.F.R. § 501(2)(c). Appellant may submit the new evidence to OWCP accompanying a valid request for reconsideration within one year of the issuance of this decision and order.

On appeal, appellant asserts that a new medical report accompanying his appeal request was sufficient to establish that he sustained more than a three percent impairment of the left lower extremity.

FACTUAL HISTORY

OWCP accepted that on March 9, 2010 appellant, then a 59-year-old maintenance worker, sustained open lacerations of the left knee, leg and ankle with complications when a large rock fell from a dump trailer and struck his leg. Appellant underwent surgical repair of the laceration on March 9, 2010. He was hospitalized from April 17 to 26, 2010 to debride necrotic tissue and treat a secondary infection. Appellant returned to light duty in April 2010 and to full duty on June 21, 2010. He received compensation for work absences.

On May 4, 2011 appellant claimed a schedule award. In support of his claim, he submitted a December 16, 2010 report from Dr. Constante S. Avecilla, an attending Board-certified surgeon, finding that appellant's left leg was permanent and stationary as of August 5, 2010. Dr. Avecilla noted that appellant's wound was completely healed, with a large scar secondary to the laceration. He opined that the laceration caused vascular damage. Appellant also had numbness in the distal left leg secondary to the laceration of secondary nerve endings.

In a June 26, 2011 report, Dr. Brian K. Konowalchuk, an attending physician Board-certified in occupational medicine, reviewed the medical record, including a March 8, 2011 functional capacity evaluation noting a slightly asynchronous gait favoring the left lower extremity. On examination of the left leg, he noted full strength, full motion of the knee and ankle, "extensive scarring to the medial and posterior leg" with numbness and paresthesias in the saphenous nerve distribution. Dr. Konowalchuk observed a mildly antalgic gait. He also related appellant's symptoms of leg pain with intermittent swelling. Dr. Konowalchuk opined that according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, the A.M.A., *Guides*), appellant had a seven percent whole person impairment for weakness of the left leg without sensory loss.

On August 6, 2011 an OWCP medical adviser reviewed the medical record, including Dr. Konowalchuk's impairment rating. He found that appellant had reached maximum medical improvement as of December 16, 2010 when evaluated by Dr. Avecilla. The medical adviser opined that according to Table 16-12³ of the sixth edition of the A.M.A., *Guides*, appellant had three percent impairment of the left lower extremity due to sensory impairment of the saphenous nerve. He noted that there were no applicable grade modifiers.

By decision dated April 24, 2013, OWCP granted appellant a schedule award for three percent impairment of the left lower extremity.

³ Table 16-12, page 534 of the sixth edition of the A.M.A., *Guides* is titled "Peripheral Nerve Impairment -- Lower Extremity Impairments."

LEGAL PRECEDENT

The schedule award provisions of FECA⁴ provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁵ For schedule awards beginning May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.⁶

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁷ Under the sixth edition, the evaluator identifies 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).

In some instances, an OWCP medical adviser's opinion can constitute the weight of the medical evidence. This occurs in schedule award cases where an opinion on the percentage of permanent impairment and a description of physical findings is on file from an examining physician, but the percentage estimate by this physician is not based on the A.M.A., *Guides*. In this instance, a detailed opinion by OWCP's medical adviser which gives a percentage based on reported findings and the A.M.A., *Guides* may constitute the weight of the medical evidence.⁹

ANALYSIS

Appellant claimed a schedule award for permanent impairment of the left lower extremity caused by accepted lacerations of the left leg. He submitted a December 16, 2010 report from Dr. Vecilla, an attending Board-certified surgeon, finding that he had reached maximum medical improvement. Appellant also provided a June 26, 2011 report from Dr. Konowalchuk, an attending physician Board-certified in occupational medicine, who provided a whole person

⁴ 5 U.S.C. § 8107.

⁵ *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (February 2013); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁷ A.M.A., *Guides* (6th ed., 2008), page 3, Section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

⁸ A.M.A., *Guides* (6th ed., 2008), pp. 494-531.

⁹ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.8(j) (September 2010).

impairment rating according to the fifth edition of the A.M.A., *Guides*. However, the sixth edition of the A.M.A., *Guides* was in effect as of May 1, 2009.¹⁰ Also, FECA does not authorize schedule awards for impairment of the “whole person.”¹¹

As appellant’s physicians were unable to provide an appropriate impairment rating, OWCP relied on the August 6, 2011 report of an OWCP medical adviser, who applied the appropriate sections of the sixth edition of the A.M.A., *Guides* to Dr. Konowalchuk’s clinical findings. The medical adviser explained that appellant had full strength and range of motion, the only appropriate impairment was for sensory deficit in the sensory distribution of the saphenous nerve. He assessed three percent impairment, noting that there were no appropriate grade modifiers.

The Board finds that OWCP properly relied on the its medical adviser’s August 6, 2011 impairment rating. The medical adviser properly applied the appropriate portions of the correct edition of the A.M.A., *Guides* to Dr. Konowalchuk’s clinical findings.¹² Therefore, OWCP’s April 24, 2013 decision finding that appellant sustained three percent impairment of the left lower extremity was proper under the facts and circumstances of this case.

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.

On appeal, appellant asserts that a new medical report accompanying his appeal request was sufficient to establish that he sustained more than a three percent impairment of the left lower extremity. As stated above, the Board may not consider new evidence for the first time on appeal.¹³ Such evidence may be submitted to OWCP accompanying a valid request for reconsideration within one year of the issuance of this decision and order.

CONCLUSION

The Board finds that appellant has not established that he sustained more than three percent impairment of the left lower extremity, for which he received a schedule award.

¹⁰ An opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of diminished probative value in determining the extent of permanent impairment. *I.F.*, Docket No. 08-2321 (issued May 21, 2009).

¹¹ *D.H.*, 58 ECAB 358 (2007).

¹² *See supra* note 9.

¹³ 20 C.F.R. § 501(2)(c).

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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