

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

M.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Belmont, NY, Employer**

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**Docket No. 14-683
Issued: August 27, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 6, 2014 appellant filed timely appeal from a September 17, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her schedule award claim. 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.

ISSUE

The issue is whether appellant is entitled to a schedule award for a permanent impairment of the right or left lower extremity.

FACTUAL HISTORY

On March 8, 2003 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim alleging that on that date she injured her left ankle in the performance of duty. OWCP

¹ 5 U.S.C. § 8101 *et seq.*

accepted the claim for a left ankle fracture and authorized a March 8, 2003 open reduction and internal fixation.²

On July 16, 2012 appellant filed a claim for a schedule award. By letter dated August 13, 2013, OWCP requested that she submit an impairment evaluation from her attending physician addressing the extent of any left lower extremity impairment due to her accepted work injury in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*).

In a report dated August 26, 2013, Dr. Chris Moros, an osteopath, diagnosed status post open reduction internal fixation of the left ankle with post-traumatic left ankle arthritis and synovitis. On examination, he measured dorsiflexion of 10 degrees, plantar flexion of 25 degrees, inversion of 15 degrees and eversion of 10 degrees with “decreased strength with dorsiflexion and plantar flexion. Dr. Moros found that appellant had an impairment due to loss of range of motion. He concluded, “Percentage of impairment is 30 percent loss of use due to special consideration for bimalleolar fracture.”

By decision dated September 17, 2013, OWCP denied appellant’s claim for a schedule award. It found that she had not submitted medical evidence that determined the extent of any impairment based on the A.M.A., *Guides*.

On appeal, appellant related that she had new physicians who were unfamiliar with the A.M.A., *Guides*.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing federal regulations⁴ 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.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

² By decision dated July 11, 2005, OWCP found that appellant had no loss of wage-earning capacity based on its determination that her actual earnings as a modified city letter carrier effective February 23, 2004 fairly and reasonably represented her wage-earning capacity.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

Chapter 16 of the sixth edition of the A.M.A., *Guides*, pertaining to the lower extremities, provides that diagnosis-based impairment is “the primary method of calculation for the lower limb” and that most impairments are based on the diagnosis-based impairment where impairment class is determined by the diagnosis and specific criteria as adjusted by grade modifiers for functional history, physical examination and clinical studies. Chapter 16 further provides:

“Alternative approaches are also provided for calculating impairment for peripheral nerve deficits, complex regional pain syndrome, amputation and range of motion. Range of motion is primarily used as a physical examination adjustment factor and is only used to determine actual impairment values when it is not possible to otherwise define impairment.”⁷

ANALYSIS

OWCP accepted that appellant sustained a left ankle fracture due to a March 8, 2003 employment injury. It authorized an open reduction and internal fixation.

On July 16, 2012 appellant filed a schedule award claim. OWCP requested that she submit an impairment evaluation from her attending physician, using the A.M.A., *Guides*, addressing whether she had employment-related left lower extremity impairment. Appellant submitted an August 26, 2013 report from Dr. Moros, who diagnosed status post open reduction and internal fixation of the left ankle and post-traumatic left ankle arthritis and synovitis. Dr. Moros measured range of motion of the left ankle and asserted that she had an impairment as a result of reduced ankle motion. He concluded that appellant had 30 percent impairment. Dr. Moros did not, however, reference the A.M.A., *Guides* in reaching his impairment rating. As he did not explain the protocols used in making the impairment determination, his opinion is insufficient to establish permanent impairment.⁸ Further, Dr. Moros based his impairment evaluation on loss of motion of the left ankle. Chapter 16 of the sixth edition of the A.M.A., *Guides*, pertaining to the lower extremities, provides that diagnosis-based impairment “is the primary method of calculation” and that “[r]ange of motion is primarily used as a physical adjustment factor and is only used to determine actual impairment values when it is not possible to otherwise define impairment.”⁹ Dr. Moros did not explain why it was appropriate to rate appellant’s impairment using range of motion and thus his opinion is of diminished probative value and insufficient to meet her burden of proof.

On appeal, appellant relates that her physicians were not familiar with the A.M.A., *Guides*. As noted, however, she has the burden to submit an impairment evaluation supporting that she sustained a permanent impairment of a scheduled member due to her work injury.¹⁰

⁷ A.M.A., *Guides* 497, 544-53.

⁸ See *Carl J. Cleary*, 57 ECAB 563 (2006) (an opinion which is not based upon the standards adopted by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of permanent impairment).

⁹ *Id.*

¹⁰ See *Veronica Williams*, 56 ECAB 367 (2005); *Annette M. Dent*, 44 ECAB 403 (1993).

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 that she is entitled to a schedule award for a permanent impairment of the right or left upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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