

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

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**P.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Monroe, LA, Employer**

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**Docket No. 14-1437  
Issued: December 18, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 13, 2014 appellant filed a timely appeal from a May 15, 2014 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 merits of this case.

**ISSUE**

The issue is whether appellant has more than a 33 percent permanent impairment of the left lower extremity and a 3 percent permanent impairment of the right lower extremity for which he received schedule awards.

**FACTUAL HISTORY**

This case has previously been before the Board. In a decision dated May 17, 2005, the Board set aside April 6 and September 14, 2004 OWCP decisions granting appellant a schedule

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

award for a 15 percent permanent impairment of the left lower extremity.<sup>2</sup> The Board noted that the medical adviser had not provided an impairment rating for polyneuropathy because it was not an accepted condition. The Board found, however, that appellant would be entitled to a schedule award for polyneuropathy if it was either a preexisting condition or due to his accepted work injury. The Board remanded the case for OWCP to determine whether his polyneuropathy should be included when calculating the left lower extremity impairment. The facts of the case as set forth in the prior decision are hereby incorporated by reference.

By decision dated July 13, 2005, OWCP granted appellant a schedule award for an additional 10 percent permanent impairment of the left lower extremity.<sup>3</sup> It noted that he had previously received a schedule award for a 15 percent left lower extremity impairment due to his left ankle condition, for a total left lower extremity impairment of 25 percent.

In a decision dated September 10, 2007, OWCP denied his claim for an increased schedule award. It noted that on July 23, 2007 Dr. Robert Holladay, a Board-certified orthopedic surgeon who provided a second opinion examination, determined that he had a 15 percent permanent impairment of the left lower extremity. OWCP determined that he had no more than the previously awarded 25 percent left lower extremity impairment.

On August 28, 2012 appellant underwent an anterior lumbar fusion at L3-4.

In an impairment evaluation dated April 2, 2013, Dr. Austin Gleason, III, a Board-certified orthopedic surgeon, diagnosed degenerative spondylolisthesis at L3-4 after an interbody fusion at L3-4, left ankle traumatic arthritis with loss of motion and degenerative arthritis and moderately severe bilateral patellofemoral joint arthritis of the knees. On examination, he found absent reflexes of the bilateral patella and Achilles. Dr. Gleason further found crepitation of the patellofemoral joint bilaterally and crepitation and loss of motion of the left ankle. He determined that appellant had a 12 percent whole person impairment due to his fusion under Table 17-4 on page 570 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition 2009) (A.M.A., *Guides*). Dr. Gleason further found that appellant had a 20 percent impairment of each lower extremity due to patellofemoral arthritis of the knees bilaterally, and a 16 percent impairment of the left lower extremity due to problems with his left ankle joint. He concluded that he had a 50 percent impairment of the lower extremity and a 30 percent impairment of the whole body.

On April 25, 2013 appellant filed a claim for a schedule award. On May 13, 2013 Dr. Ronald Blum, an OWCP medical adviser, reviewed Dr. Gleason's report and noted that appellant was not entitled to a permanent impairment rating of the spine as it was not a scheduled member. He further determined that Dr. Gleason did not discuss the x-ray findings that he used to evaluate appellant's ankle arthritis or patellofemoral arthritis. The medical adviser recommended that he be referred for a second opinion examination.

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<sup>2</sup> Docket No. 05-473 (issued May 17, 2005). OWCP accepted that on May 22, 2003 appellant, then a 38-year-old automation clerk, sustained an aggravation of lumbar strain, an aggravation of a lumbar herniated disc, an aggravation of bilateral knee osteoarthritis, an aggravation of osteoarthritis of the left ankle, tarsal syndrome of the left ankle and heterotopic calcification of the left ankle in the performance of duty.

<sup>3</sup> On October 25, 2005 appellant retired on disability.

On July 29, 2013 OWCP referred appellant to Dr. Jenness D. Courtney, a Board-certified physiatrist, for a second opinion examination. In a report dated August 14, 2013, Dr. Courtney reviewed the medical evidence of record, including the results of diagnostic studies. He diagnosed chronic low back pain as a result of a fusion at L3-4, traumatic left ankle arthritis with heterotopic ossification and loss of motion, bilateral patellofemoral arthritis of the knees, and unconfirmed left tarsal tunnel syndrome. On examination, Dr. Courtney found full strength of the upper and lower extremities and intact sensation from the knees to the toes. He measured range of motion of the right ankle and both knees. Citing *The Guides Newsletter* of July/August 2009, Dr. Courtney found that appellant had no radiculopathy based on his physical examination and thus no impairment of the peripheral nerves of the lower extremity.

For the left lower extremity, he identified the diagnosis as class 2 ankle arthrodesis using Table 16-2 on page 508, the foot and ankle regional grid, which yielded a default value of 20 percent. Dr. Courtney rated appellant's arthrodesis as class 2 due to reduced motion. He applied a grade modifier for physical examination based on muscle atrophy and, after applying the net adjustment formula, found no adjustment from the default grade of 20 percent.

For both lower extremities, Dr. Courtney identified the diagnosis as class 1 patellofemoral arthritis using Table 16-3 on page 511, the knee regional grid, which yielded a default value of three percent. He noted that the A.M.A., *Guides*, "specifically mentions not to use clinical studies and x-ray arthritis for adjustments. None of the modifiers including physical examination was then necessary; therefore, no adjustment was made resulting in the [three percent] lower extremity impairment for each extremity was kept." Dr. Courtney combined the 20 percent impairment for ankle arthrodesis with the 3 percent impairment due to patellofemoral arthritis to find a 22 percent left lower extremity impairment. He further found a three percent right lower extremity impairment due to patellofemoral arthritis. In an addendum dated December 11, 2013, Dr. Courtney advised that nerve conduction studies showed generalized axonal polyneuropathy but not tarsal tunnel syndrome. He found that appellant was not entitled to an additional impairment based on electrodiagnostic studies.

On January 27, 2014 Dr. Blum reviewed Dr. Courtney's report and concurred with his findings. He noted that appellant had previously received a schedule award for a 15 percent left lower extremity impairment due to ankle arthritis and a 12 percent left lower extremity impairment due to polyneuritis. The medical adviser subtracted the previously awarded 15 percent left lower extremity impairment due to arthritis from the 20 percent left lower extremity impairment due to arthritis found by Dr. Courtney and concluded that appellant had an additional 5 percent left lower extremity impairment due to left ankle arthritis. He combined the additional five percent impairment due to ankle arthritis with the three percent left knee impairment to find a total additional left lower extremity impairment of eight percent. Dr. Blum also concurred with Dr. Courtney's finding that appellant had a three percent right lower extremity impairment due to patellofemoral arthritis.

By decision dated May 15, 2014, OWCP granted appellant schedule awards for a three percent right lower extremity impairment and an additional eight percent left lower extremity impairment. The period of the awards ran for 31.68 weeks from August 14, 2013 to March 23, 2014. OWCP paid appellant's compensation based on an effective pay rate date of May 22, 2003, the date of injury.

On appeal appellant, citing *Mark A. Holloway*,<sup>4</sup> contended that the date of maximum medical improvement should be April 2, 2013, the date of his attending physician's evaluation, rather than August 14, 2014. He further argued that the medical adviser failed to consider his November 25, 2013 nerve conduction studies and his diagnosed condition of tarsal tunnel syndrome in rating his impairment. Appellant also maintains that his pay rate should be based on the date of his disability retirement on September 26, 2005 rather than the date of injury.

### **LEGAL PRECEDENT**

The schedule award provision of FECA,<sup>5</sup> and its implementing federal regulations,<sup>6</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>7</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>8</sup>

The sixth edition requires identifying the impairment Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).<sup>9</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

### **ANALYSIS**

OWCP accepted that appellant sustained an aggravation of lumbar strain, an aggravation of a lumbar herniated disc, an aggravation of bilateral knee osteoarthritis, an aggravation of osteoarthritis of the left ankle, tarsal syndrome of the left ankle and heterotopic calcification of the left ankle due to a May 22, 2003 employment injury. It granted him schedule awards for a 25 percent permanent impairment of the left lower extremity.

In an April 2, 2013 impairment evaluation, Dr. Gleason found that appellant had a 12 percent whole person impairment due to his August 28, 2012 lumbar fusion at L3-4. He utilized Table 17-4 on page 570 of the A.M.A., *Guides*, the lumbar spine regional grid. FECA, however, specifically excludes the back as an organ and, therefore, the back does not come under the provisions for payment of a schedule award.<sup>10</sup> Dr. Gleason further concluded that appellant had

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<sup>4</sup> 55 ECAB 321 (2004).

<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> *Id.* at § 10.404(a).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>9</sup> A.M.A., *Guides* 494-531.

<sup>10</sup> 5 U.S.C. § 8101(19); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

a 20 percent permanent impairment of each lower extremity due to patellofemoral arthritis and 16 percent impairment due to arthritis of the ankle joint. As found by the medical adviser, however, he did not discuss the findings he used to reach this impairment determination. Thus, his ratings are of diminished probative value.

OWCP referred appellant to Dr. Courtney for an impairment evaluation. In a report dated August 14, 2013, Dr. Courtney diagnosed chronic low back pain due to an L3-4 fusion, traumatic arthritis of the left ankle with heterotopic ossification, unconfirmed left tarsal tunnel syndrome and bilateral patellofemoral knee arthritis. He found that appellant had no radiculopathy on physical examination and had no impairment of the peripheral lower extremity nerves. Dr. Courtney utilized the diagnosis of class 2 left ankle arthrodesis using the foot and ankle regional grid, which yielded a default value of 20 percent.<sup>11</sup> He applied a grade modifier of two for physical examination findings of muscle atrophy. Dr. Courtney noted that he used loss of range of motion to identify the class 2 diagnosis. He applied the net adjustment formula and found no adjustment from the default value. Dr. Courtney further determined that appellant had a three percent permanent impairment of each lower extremity due to patellofemoral arthritis of the knees,<sup>12</sup> for a total right lower extremity impairment of 3 percent and left lower extremity impairment of 22 percent. However, he did not discuss the x-ray studies that he used to establish the diagnosis of class 1 patellofemoral arthritis. Dr. Courtney has failed to adequately explain that the measurements necessary for rating the cartilage interval of appellant's knees were taken.<sup>13</sup>

Additionally, in an addendum dated December 11, 2013, Dr. Courtney found that appellant's nerve conduction study showed generalized sensory and motor axonal polyneuropathy but no tarsal tunnel syndrome. He concluded that appellant had no additional impairment. As previously found by the Board, however, any impairment due to polyneuropathy is included in evaluating the extent of any lower extremity impairment if it is either employment related or a preexisting condition.<sup>14</sup> Dr. Courtney did not address whether appellant had additional impairment due to polyneuropathy. Therefore, his opinion is insufficient to resolve the issue of the extent of appellant's permanent impairment of the lower extremities.

On January 27, 2014 Dr. Blum concurred with Dr. Courtney's finding of a three percent permanent impairment of each lower extremity due to knee arthritis. He noted that appellant had previously received schedule awards for a 15 percent left lower extremity impairment due to ankle arthritis and a 12 percent left lower extremity impairment due to polyneuritis. The medical adviser subtracted the prior rating of a 15 percent ankle impairment from the 20 percent ankle impairment found by Dr. Courtney, to find an additional ankle impairment of 5 percent. He added the additional five percent left lower extremity impairment due to the ankle rating to the three percent impairment of the left knee to find an additional eight percent left lower extremity impairment. OWCP's procedures provide that a previous impairment to a member is included in ascertaining the percentage of loss except if "[t]he prior impairment is due to a previous work-

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<sup>11</sup> A.M.A., *Guides* 508, Table 16-2.

<sup>12</sup> *Id.* at 511, Table 16-3.

<sup>13</sup> *See C.W.*, Docket No. 12-804 (issued October 2, 2012).

<sup>14</sup> *See Mike E. Reid*, 51 ECAB 543 (2000).

related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.”<sup>15</sup> The medical adviser, consequently, should have subtracted the prior award for the left lower extremity from the total left lower extremity impairment found by Dr. Courtney.

On remand OWCP should obtain an opinion on the extent of appellant’s permanent impairment consistent with the A.M.A., *Guides*. Prior to issuing an additional schedule award, it should then subtract the previously awarded 22 percent permanent impairment of the left lower extremity from the current impairment rating for the left lower extremity in order to determine whether appellant is entitled to an additional award. A *de novo* decision shall follow.

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 15, 2014 decision of the Office of Workers’ Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 18, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

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

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

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<sup>15</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(1)(a) (February 2013).