

FACTUAL HISTORY

This case has previously been before the Board with respect to appellant's claim for leave buyback compensation.² In a March 4, 2011 decision, the Board affirmed OWCP's December 17, 2013 decision which found that he had not established entitlement to leave buyback. Appellant had requested 240 hours of disability from January 23 to April 2, 2006, a period of disability related to his two right ankle surgeries, due to his accepted September 26, 2005 employment-related injury. The facts of the case, as set forth in the prior decision, are incorporated by reference. The relevant facts are set forth below.

OWCP accepted that on September 26, 2005 appellant, then a 31-year-old correctional officer, sustained a right ankle sprain/strain while in the performance of duty. On February 2, 2006 he underwent right ankle arthroscopic surgery with percutaneous distraction and application of a Taylor spatial frame to the right foot and leg to treat his right ankle traumatic arthritis. On March 9, 2006 appellant underwent removal of an external fixation device from his right lower extremity. Neither surgery was authorized by OWCP. On September 20, 2006 and August 31, 2009 two OWCP medical advisers opined that appellant's ankle surgeries should not be authorized as the medical evidence did not establish that his preexisting right ankle osteoarthritis condition was aggravated, accelerated or exacerbated by the September 26, 2005 employment injury.

On April 7, 2011 and August 6, 2013 appellant filed claims for a schedule award. In an August 2, 2013 medical report, Dr. Elaine A. O'Donnell, a podiatrist, noted appellant's February 2 and March 2006 right ankle surgeries. She advised that he continued to suffer acute and chronic episodes of his post-traumatic arthritic right ankle. Dr. O'Donnell opined that appellant's post-traumatic ankle pain was chronic and that it would come and go according to his activity and the weather.

By letter dated September 3, 2013, OWCP requested that appellant submit a medical report from his physician addressing the extent of any permanent impairment in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Appellant was afforded 30 days to submit the requested evidence. He did not respond.

In an October 10, 2013 decision, OWCP denied appellant's claim, finding that he had not submitted the requested medical evidence to establish his entitlement to a schedule award.

By letter dated October 14, 2013, appellant, through his attorney, requested a telephone hearing with an OWCP hearing representative.

Medical reports and diagnostic test results dated January 21 to October 16, 2006 from Dr. O'Donnell, Dr. Guido A. LaPorta, a podiatrist, Dr. Jamie S. Stallman, a Board-certified radiologist, Dr. David Sabbar, Board-certified in nuclear medicine, and Dr. David F. Piro, a Board-certified surgeon, addressed appellant's right ankle conditions which included post-

² Docket No. 10-1196 (issued March 4, 2011).

traumatic arthritis of the right ankle secondary to trauma and osteoarthritis of the right ankle for which he underwent surgery.

An unsigned report dated September 12, 2013 noted appellant's complaints of daily and constant right foot and ankle pain, stiffness, swelling, numbness, and tingling. Appellant had restrictions related to his activities of daily living. The report provided findings on physical examination and stated that he had post-traumatic strain, sprain, tibiotalar osteoarthritis, and talar osteochondritis dissecans of the right ankle. Appellant also had chronic instability and degenerative joint disease of the right ankle. He was status post the February 2 and March 9, 2006 right ankle surgeries. The report stated that the September 26, 2005 work-related injury was the competent producing factor for his subjective and objective findings. Appellant had two percent permanent impairment of the right lower extremity for his right ankle arthritis under Table 16-2 of the A.M.A., *Guides*. The report concluded that he reached maximum medical improvement on the day of his examination.

In a July 2, 2014 decision, an OWCP hearing representative affirmed the October 10, 2013 decision. He found that appellant failed to submit probative medical evidence in support of his schedule award claim as the September 12, 2013 report was not signed by a physician. The hearing representative further found that, even if the report were signed by a physician, this report and the reports from Dr. O'Donnell did not provide a rationalized medical opinion on how appellant's right ankle arthritis was causally related to the accepted September 26, 2005 work injury.

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, functions and organs of the body. 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁵ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶ Effective May 1, 2009, FECA adopted the sixth edition of the A.M.A., *Guides*⁷ as the appropriate edition for all awards issued after that date.⁸

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Ausbon N. Johnson*, 50 ECAB 304 (1999).

⁶ *Supra* note 4; *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

⁷ A.M.A., *Guides* (6th ed. 2009).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

The sixth edition requires identifying the impairment class for the Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰

For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.¹¹

ANALYSIS

OWCP accepted that appellant sustained right ankle sprain and strain while in the performance of duty. Appellant claimed a schedule award due to his accepted conditions. OWCP denied his claim for a schedule award. The Board finds that appellant has not met his burden of proof to establish permanent impairment to his right lower extremity due to his accepted conditions.¹²

An unsigned report dated September 12, 2013 that found appellant had two percent impairment of the right lower extremity under Table 16-2 of the sixth edition of the A.M.A., *Guides* is insufficient to establish his claim. A report that is unsigned or bears an illegible signature and lacks proper identification cannot be considered probative medical evidence.¹³

The remaining reports from Dr. O'Donnell, Dr. LaPorta, Dr. Stallman, Dr. Sabbar and Dr. Piro addressed appellant's right ankle conditions which included post-traumatic arthritis of the right ankle secondary to trauma and osteoarthritis of the right ankle for which he underwent surgery. OWCP has not accepted that either condition is causally related to the September 26, 2013 work injuries. It did not authorize appellant's two right ankle surgeries. It is his burden to establish that these conditions were causally related to the accepted September 26, 2005 employment injuries.¹⁴ None of the above-noted physicians provided any medical rationale explaining how the diagnosed right ankle conditions were caused by the accepted injuries.¹⁵ Moreover, they did not provide an opinion as to whether appellant had reached maximum medical improvement with regard to his accepted right ankle conditions and as to whether he had any lower extremity impairment causally related to the accepted condition.

⁹ A.M.A., *Guides* 494-531.

¹⁰ *Id.* at 521.

¹¹ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹² An employee seeking a schedule award has the burden of proof to establish permanent impairment. See *Denise D. Cason*, 48 ECAB 530 (1997).

¹³ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

¹⁴ See cases cited, *supra* note 11.

¹⁵ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

For the stated reasons, the Board finds that the reports of Dr. O'Donnell, Dr. LaPorta, Dr. Stallman, Dr. Sabbar and Dr. Piro are of diminished probative value and insufficient to establish appellant's entitlement to a schedule award.

The Board finds that appellant has not shown that he is entitled to schedule award compensation for his right ankle and thus he has not met his burden of proof.

On appeal, counsel contends that OWCP's decision was contrary to fact and law. As explained above there is no probative medical evidence of record establishing that appellant sustained permanent impairment to the right ankle resulting from his accepted conditions. Consequently, appellant has not established entitlement to a schedule award.

Appellant may request a 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 failed to establish that he has any permanent impairment of the right lower extremity, warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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