



walking in heavy snow and ice. OWCP accepted the claim for right foot sprain and right stress fracture of the metatarsals and paid benefits.

Appellant claimed a schedule award. In a July 13, 2011 report, Dr. William N. Grant, a Board-certified internist, reported the history of injury and presented findings on physical examination. He noted a fallen right foot arch and thickening of the plantar aspect of the right foot, limited range of motion and minimal deformity of the metatarsals. Dr. Grant found that appellant reached maximum medical improvement. Under the sixth edition of the American Medical Association's, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), she had 13 percent right lower extremity impairment. A copy of the lower extremity permanent impairment worksheet was provided.

On August 5, 2011 OWCP referred a statement of accepted facts and the medical record to a medical adviser. In an August 18, 2011 report, Dr. Nabil F. Angley, a Board-certified orthopedic surgeon, reviewed the medical records. He recommended a second opinion examination as Dr. Grant's impairment evaluation was based on inaccurate and incomplete information and failed to provide sufficient explanation for his impairment rating.

In a November 2, 2011 addendum report, Dr. Grant stated that, based on the July 13, 2011 examination findings, appellant had 11 percent of the right leg impairment based on a right foot sprain and stress fracture of the right metatarsals. He referenced specific tables and charts from the A.M.A., *Guides*.

In a June 29, 2012 report, Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon and OWCP referral physician, reviewed the medical record, statement of accepted facts and set forth findings on examination. The right ankle revealed 40 degrees plantar flexion with poor effort, 8 degrees dorsiflexion with poor effort, 30 degrees inversion and 22 degrees eversion. Appellant had normal examination of right foot and ankle with respect to palpation, color, scarring, swelling, temperature and localizing tenderness with no abnormality of gait, stance or balance. Normal motor strength was noted in both lower extremities with no abnormality of toe or heel standing or walking. Dr. Ghanma opined that the accepted conditions of right foot sprain and stress fracture of right metatarsals had resolved. Under the sixth edition of the A.M.A., *Guides*, he opined that appellant had one percent right leg impairment. Under Table 16-2, page 504, Dr. Grant opined that the right metatarsal fracture was class 1 with default grade C or one percent (CDX). He assigned a grade modifier 2 for Functional History (GMFH), grade modifier 0 for Physical Examination (GHPE) and grade modifier 0 for Clinical Studies (GMCS). Dr. Grant applied the net adjustment formula,  $(GMFH - CDX) (2-1) + (GMPE - CDX) (0-1) + (GMCS - CDX) (0-1)$  and found a net adjustment of -1 or a grade B impairment of one percent.

In an August 21, 2012 report, Dr. Brian M. Tonne, a medical adviser, reviewed the evidence of record and statement of accepted facts. He opined that appellant reached maximum medical improvement on February 19, 2009. Dr. Toone concurred with Dr. Ghanma's one percent impairment rating of the left leg.

By decision dated November 16, 2012, OWCP granted appellant a schedule award for one percent right lower extremity impairment. The period of the award ran from February 19 to March 11, 2009.

Appellant's attorney requested a telephonic hearing, which was held on February 14, 2013. Appellant testified that she continued to have problems with her right foot and could no longer wear heels. She contended that Dr. Ghanma did not use any equipment to determine her range of motion and that his office did not look like a regular physician's office. Counsel argued that Dr. Ghanma's report was not sufficiently rationalized or in the alternative, a conflict in medical opinion was created with that of Dr. Grant. No medical evidence relevant to the issue of permanent impairment was submitted.

By decision dated May 2, 2013, an OWCP hearing representative affirmed the November 16, 2012 decision.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>2</sup> and its implementing federal regulations<sup>3</sup> 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.<sup>4</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> For decisions issued after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup> For decisions issued after May 1, 2009, the sixth edition will be used.<sup>7</sup>

The sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.<sup>8</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.<sup>9</sup>

---

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404.

<sup>4</sup> *Ausbon N. Johnson*, 50 ECAB 304 (1999).

<sup>5</sup> *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

<sup>7</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>8</sup> A.M.A., *Guides* 494-531.

<sup>9</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

## ANALYSIS

The Board finds that a conflict in medical opinion exists between Dr. Grant and Dr. Ghanma concerning the nature and extent of permanent impairment caused by the accepted right foot sprain and right stress fracture of the metatarsals. In a November 2011 addendum report, Dr. Grant opined that appellant had 11 percent impairment to the right lower extremity pursuant to the sixth edition of the A.M.A., *Guides* based on right foot sprain and right stress fracture metatarsals. This contrasted with the opinion of Dr. Ghanma, who opined that appellant's strain had resolved and she had no residuals or impairment as a result of the strain and only had impairment based on the accepted right metatarsal stress fracture.

Section 8123(a) of FECA provides in pertinent part: If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>10</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.<sup>11</sup> The Board finds that OWCP should have referred appellant to an impartial medical specialist to resolve the medical conflict regarding the extent of permanent impairment arising from her accepted employment injury. Additionally, the Board notes that while Dr. Grant's July 13, 2011 impairment report was found to be based on inaccurate and incomplete information and necessitated referral for a second opinion examination, an OWCP medical adviser never reviewed Dr. Grant's November 2011 addendum report.<sup>12</sup>

Accordingly, the Board will set aside the April 30, 2013 OWCP decision and remand for referral of appellant, the case record and a statement of accepted facts to an appropriate independent medical specialist to determine the nature and the degree of her permanent impairment due to her accepted right foot sprain and right stress fracture of the metatarsals conditions. On remand, OWCP should instruct the impartial medical specialist to resolve the conflict as to whether she had any additional impairment of the right lower extremity based on her accepted conditions and to clearly indicate the specific background and protocols of the A.M.A., *Guides* upon which the opinion is based. After such further development of the record as it deems necessary, it shall issue a *de novo* decision.

## CONCLUSION

The Board finds that the case is not in posture for decision. The case is remanded for further development of the medical evidence.

---

<sup>10</sup> 5 U.S.C. § 8123(a).

<sup>11</sup> *William C. Bush*, 40 ECAB 1064, (1989).

<sup>12</sup> While OWCP's hearing representative found Dr. Grant's July 13, 2011 report was not probative regarding appellant's impairment, this is a determination for an OWCP medical adviser, who is considered an expert in the application of the A.M.A., *Guides*. See *supra* note 9.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 30, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further development in accordance with this decision.

Issued: January 13, 2014  
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