United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 14-1030**
	)	**Issued: October 7, 2014**
U.S. CAPITOL POLICE, Washington, DC, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 31, 2014 appellant, through his attorney, filed a timely appeal from a March 24, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) granting a schedule award. Pursuant to the Federal Employees' Compensation Act[1] (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 two percent permanent impairment of the left leg, for which he received a schedule award.

FACTUAL HISTORY

On October 3, 2012 appellant, then a 33-year-old capitol police officer, filed a traumatic injury claim alleging that on July 9, 2012 he injured his left Achilles tendon. OWCP accepted the claim for left Achilles tendinitis. On December 11, 2012 appellant underwent a debridement

[1] 5 U.S.C. § 8101 *et seq.*

and repair of the left Achilles tendon with excision of degenerated tendon tissue and an excision of an olecranon spur.

In a report dated April 25, 2013, Dr. Christopher S. Raffo, a Board-certified orthopedic surgeon, noted that appellant's symptoms had improved but that he still had swelling and mild tenderness over the Achilles tendon. He measured full strength and range of motion of the ankle and foot. Dr. Raffo released appellant to return to his usual employment on May 13, 2013.

In an impairment evaluation dated August 20, 2013, Dr. Robert W. Macht, a Board-certified surgeon, found that appellant was postoperative after a left Achilles tendon injury with tendinitis and a bone spur. He discussed appellant's complaints of moderate left Achilles tendon and calf pain with give way weakness and swelling. On examination, Dr. Macht found two centimeters of left calf atrophy, thickening of the left Achilles tendon and tenderness to palpation. He measured range of motion of the left ankle of 40 degrees flexion, 15 degrees dorsiflexion, 25 degrees inversion and 20 degrees eversion. Dr. Macht noted that the range of motion measurements were passive and repeated three times. He found no loss of sensation and mild weakness in left ankle flexion. Dr. Macht determined that a magnetic resonance imaging (MRI) scan study obtained before appellant's surgery showed tendinosis of the Achilles tendon. Citing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2008) (A.M.A., *Guides*), he applied Table 16-2, the foot and ankle regional grid, and found that appellant had a class 1 injury to his Achilles tendon with mildly reduced motion, which yielded a five percent default impairment value.[2] Dr. Macht applied grade modifiers of one for functional history and two for physical examination based on calf atrophy. He noted that clinical studies confirmed the diagnosis. Dr. Macht moved the default impairment value one higher based on grade modifiers and concluded that appellant had a six percent permanent impairment of the left lower extremity.

On November 7, 2013 appellant filed a claim for a schedule award. On November 25, 2013 Dr. Lawrence A. Manning, an OWCP medical adviser, reviewed the evidence of record and applied the A.M.A., *Guides* to the August 20, 2013 impairment evaluation from Dr. Macht. According to Table 16-20 and Table 16-22 on page 549 of the A.M.A., *Guides*, plantar flexion of 40 degrees, dorsiflexion of 15 degrees, inversion of 25 degrees and eversion of 20 degrees yielded no impairment due to loss of range of motion. Dr. Manning stated that appellant fit under the category of class 1 Achilles tendinitis with palpatory findings and/or radiographic findings, which ranged in impairment value from zero to two percent under Table 16-2 on page 501. He moved the default impairment value of one percent over one place to the right based on appellant's weakness in flexion and calf atrophy to rate an impairment of two percent. The medical adviser also noted that Dr. Raffo had found normal range of motion and strength. He opined that appellant reached maximum medical improvement on December 11, 2013.

By decision dated March 24, 2014, OWCP granted appellant a schedule award for a two percent impairment of the left leg. The period of the award ran for 5.76 weeks from December 11, 2013 to January 20, 2014.

[2] A.M.A., *Guides* 501, Table 16-2.

On appeal appellant's attorney argues that OWCP should base the schedule award on the findings of Dr. Macht rather than the medical adviser, who did not examine appellant.

LEGAL PRECEDENT

The schedule award provision of FECA,[3] and its implementing federal regulations,[4] 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]

The sixth edition requires identifying 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).[7] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.[8]

ANALYSIS

OWCP accepted that appellant sustained left Achilles tendinitis due to a July 9, 2012 employment injury. On December 11, 2012 appellant underwent a repair of the left Achilles tendon, an excision of degenerated tendon tissue and an excision of an oleocranon spur.

On April 24, 2013 Dr. Raffo measured full strength and range of motion of the ankle and foot. He found that appellant could resume his usual employment. Dr. Raffo noted that appellant had continued swelling and mild tenderness over the Achilles tendon.

In an August 20, 2013 impairment evaluation, Dr. Macht reviewed appellant's symptoms of moderate pain in the left Achilles tendon and calf with weakness and swelling. He measured

[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* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[7] A.M.A., *Guides* 494-531.

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013); *see also D.H.*, Docket No. 12-1857 (issued February 26, 2013).

left calf atrophy of two centimeters and range of motion of the left ankle of 40 degrees flexion, 15 degrees dorsiflexion, 25 degrees inversion and 20 degrees eversion. Dr. Macht found full sensation but mild weakness in left ankle flexion. He noted that an MRI scan study showed left Achilles tendon tendinosis. Citing to the sixth edition of the A.M.A., *Guides*, Dr. Macht identified the diagnosis as a class 1 Achilles tendon injury with mild loss of motion, which yielded a default impairment value of five percent under Table 16-2 on page 501. He found a grade modifier of one for functional history and a grade modifier of two for physical examination due to calf atrophy. Dr. Macht did not apply a grade modifier for clinical studies as they were used to identify the diagnosis.[9] He found that the grade modifiers moved the default impairment value one value higher, which yielded a six percent left lower extremity impairment. The Board notes, however, section 16.2a of the A.M.A., *Guides* provides, "If assignment to a class is determined by severity of ROM [range of motion] deficit (*i.e.*, normal, mild, moderate, severe, very severe), this severity is determined using sec[tion] 16.7 ROM Impairment."[10] Range of motion measurements for the left ankle of 40 degrees of plantar flexion, 15 degrees of dorsiflexion, 25 degrees inversion and 20 degrees eversion yielded no impairment under section 16.7 of the A.M.A., *Guides*.[11] Consequently, as Dr. Macht's range of motion findings were normal, he improperly applied the A.M.A., *Guides* in identifying the diagnosis as Achilles tendinitis with a mild motion deficit.

On November 25, 2013 Dr. Manning reviewed Dr. Macht's report. Based on the normal range of motion findings, he identified the diagnosis as class 1 Achilles tendinitis with palpatory findings, which yielded a default value of one percent.[12] Dr. Manning applied the grade modifiers found by Dr. Macht, which moved the default value over one place for a two percent left lower extremity impairment.[13] He properly applied the provisions of the A.M.A., *Guides*, and his report represents the weight of the medical evidence and establishes that appellant has no more than a two percent impairment of the left lower extremity.

On appeal appellant's attorney argues that OWCP should have relied on the opinion of Dr. Macht, who examined appellant, rather than the medical adviser. It is well established, however, that when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his or her opinion is of diminished probative value.[14] OWCP properly relied on the opinion of the medical adviser in applying the A.M.A., *Guides* to the findings of the attending physician.

[9] *See* A.M.A., *Guides* 515-16.

[10] *Id.* at 499.

[11] *Id*. at 549, Table 16-20 and Table 16-22.

[12] *Id*. at 501, Table 16-2.

[13] Utilizing the net adjustment formula discussed above, (GMFH-CDX) + (GMPE-CDX), or (1-1) + (2-1) = 1, yielded an adjustment of one place to the right.

[14] *See Linda Beale*, 57 ECAB 429 (2006).

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 no more than a two percent permanent impairment of the left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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