

and caught his left foot. On November 18, 2005 appellant underwent a left Achilles tendon repair performed by Dr. Bertram Zarins, a Board-certified orthopedic surgeon. OWCP accepted the claim on December 29, 2005 for a left ruptured left Achilles tendon. Appellant returned to a light-duty job on May 2, 2006 and full duty on June 24, 2006.

Appellant submitted a CA-7 (claim for compensation) on October 25, 2010 for a schedule award and submitted an October 19, 2010 report from Dr. Zarins, who provided a history and results on examination. Dr. Zarins found no residual impairment under the sixth edition of the A.M.A., *Guides*. By decision dated June 18, 2013, OWCP denied appellant's claim for a schedule award under 5 U.S.C. § 8107 as the medical evidence did not establish a left leg permanent impairment causally related to the November 15, 2005 injury.

Appellant requested a hearing before an OWCP hearing representative, which was held on November 20, 2013. By decision dated January 27, 2014, the hearing representative affirmed the June 18, 2013 OWCP decision.

By letter dated February 10, 2014, appellant, through counsel, requested reconsideration. He submitted a January 24, 2014 report from Dr. Karen Garvey, a Board-certified internist. Dr. Garvey provided a history and results on examination performed on December 13, 2013. With respect to strength in the left ankle, she reported 3+ - 4/5 for eversion. As to permanent impairment under the A.M.A. *Guides*, Dr. Garvey identified Table 16-2, the regional grid for ankle impairments. She noted that, while the physical examination showed mild range of motion deficits, there was moderate weakness based on eversion strength testing and appellant's inability to walk on his toes. Dr. Garvey found the default impairment was 10 percent, with no adjustment after applying grade modifier one for functional history and clinical studies.

The medical evidence was referred to an OWCP medical adviser. In a report dated April 15, 2014, the medical adviser found that Dr. Garvey provided the most comprehensive examination in the medical record. He stated that, while Dr. Garvey had reported a moderate loss of range of motion, her measurements showed only a mild loss of motion. According to the medical adviser, the proper application of Table 16-2 was under mild motion deficits, which had a default impairment of five percent. He then adjusted the impairment to four percent, based on grade modifier one for functional history, zero for physical examination, with no modifier applicable for clinical studies. The medical adviser found December 13, 2013 as the date of maximum medical improvement.

By decision dated April 29, 2014, OWCP vacated the January 27, 2014 decision. On May 14, 2014 it issued a schedule award decision for a four percent permanent impairment to the left leg. The period of the award was 11.52 weeks from December 13, 2013.

Appellant requested a hearing before an OWCP hearing representative, which was held on December 10, 2014. Counsel argued there was a conflict in the medical evidence.

In a decision dated February 26, 2015, the hearing representative affirmed the May 14, 2014 schedule award. She found the weight of the evidence was represented by an OWCP medical adviser.

LEGAL PRECEDENT

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁴

With respect to an ankle impairment, the A.M.A., *Guides* provides a regional grid at Table 16-2.⁵ The Class of Diagnosis (CDX) impairment is determined based on specific diagnosis, and then the default value for the identified CDX is determined. The default value (grade C) may be adjusted by using grade modifiers for Functional History (GMFH, Table 16-6), Physical Examination (GMPE, Table 16-7), and Clinical Studies (GMCS, Table 16-8). The adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁶

ANALYSIS

In the present case, appellant submitted the January 24, 2014 report from Dr. Garvey, who opined that appellant had a 10 percent left leg impairment under Table 16-2 of the A.M.A. *Guides*. OWCP referred the case to an OWCP medical adviser for review. The medical adviser reviewed the examination results from Dr. Garvey and found that appellant had a four percent left leg impairment. The Board finds that the medical adviser incorrectly reviewed the evidence and that his April 15, 2014 report is of diminished probative value.

Both Dr. Garvey and OWCP medical adviser agreed on the diagnosis to be used under Table 16-2: Strain; tendinitis; or [history of] ruptured tendon involving the Achilles tendon. For a class 1 impairment, however, the diagnosis is further categorized as “mild motion deficits” or “moderate motion deficits and/or significant weakness.”

The description of “mild motion deficits” has default (grade C) impairment of five percent, with net adjustments resulting in a leg impairment from three percent (grade A) to seven percent (grade E). An OWCP medical adviser determined the impairment under “mild motion deficits.” For “moderate motion deficits and/or significant weakness,” the default leg

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ A. George Lampo, 45 ECAB 441 (1994).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010).

⁵ A.M.A., *Guides* 501, Table 16-2.

⁶ The net adjustment is up to +2 (grade E) or -2 (grade A).

impairment is 10 percent and with adjustments ranges from a 7 percent leg impairment (grade A) to 13 percent (grade E).⁷

In her January 24, 2014 report, Dr. Garvey found that “moderate motion deficits and/or significant weakness” was appropriate in this case. This was not based on a finding of moderate motion deficits, but on the examination results for weakness in ankle eversion and the inability to stand on toes. Dr. Garvey specifically stated that the examination showed mild motion deficits. An OWCP medical adviser incorrectly stated that Dr. Garvey based her opinion on moderate motion deficit that was not justified by her examination results. He did not provide a reasoned medical opinion as to why the leg impairment should not be determined under “moderate motion deficits and/or significant weakness” for the diagnosed condition pursuant to Table 16-2.

The case will be remanded for further review of the evidence by an OWCP medical adviser in accord with OWCP procedures.⁸ After such further development as is deemed necessary, OWCP should issue an appropriate decision.

CONCLUSION

The Board finds the case is not in posture for decision and is remanded to OWCP for further development of the evidence.

⁷ A.M.A. *Guides* 501, Table 16-2.

⁸ If the medical adviser does not provide adequate rationale for the opinion on permanent impairment, OWCP should request clarification or a supplemental report from the medical adviser. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f)(2) (February 2013).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 26, 2015 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 10, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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