



## **FACTUAL HISTORY**

On August 10, 2012 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim alleging that on August 9, 2012 she tripped on sloped ground and a small indentation in the grass and suffered a severely sprained left ankle. On October 23, 2012 OWCP accepted her claim for sprain of the left ankle, other acquired deformities of left ankle and foot, and left ganglion of tendon. On September 25, 2012 appellant underwent an arthroscopy with extensive debridement, left ankle, modified Brostrom, left ankle, and application of posterior splint, left. On April 9, 2013 she underwent a left ankle arthrodesis. Appellant returned to work on July 18, 2013 full time with restrictions.

On March 5, 2014 appellant filed a claim for a schedule award. In support thereof, she submitted a March 5, 2014 Permanent Impairment Worksheet by Dr. David Wade, her treating podiatrist,<sup>3</sup> who found that pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> edition 2009) (A.M.A., *Guides*), after applying Table 16-2 for the criteria of tibial-talar and talus/calcaneus, appellant had a class 4 Class of Diagnosis (CDX) (neutral).<sup>4</sup> Dr. Wade noted grade modifiers of 1 for Functional History (GMFH), grade modifiers of 4 for Physical Examination (GMPE), and found that Clinical Studies (GMCS) were not applicable. After applying the grade modifiers, he found that appellant had a grade A or 50 percent impairment.

On March 24, 2014 OWCP referred Dr. Wade's report to an OWCP medical adviser. In a March 26, 2014 report, Dr. Ronald H. Blum, a Board-certified orthopedic surgeon and an OWCP medical adviser, noted that Dr. Wade had not provided any supporting data to justify his functional modifiers and no description of malalignment that would allow OWCP to determine impairment in this case. He also noted that he could not find information supporting subtalar arthrodesis. Dr. Blum concluded that the report by Dr. Wade was not adequate to allow him to recommend impairment as it did not meet the requirements of OWCP. He suggested that OWCP refer appellant for an alternate impairment medical evaluation.

On April 3, 2014 OWCP referred appellant to Dr. Michael Shawn Smith, a physiatrist, for a second opinion. In an April 22, 2014 report, Dr. Smith assessed appellant with left ankle-foot fusion status post significant sprain and cartilaginous injury involving arthrodesis of the tibia-talus, and talus-calcaneus reported history of malalignment. He determined the grade modifiers as follows: grade modifier of 1 for functional history, grade modifier of 3 for clinical studies based on magnetic resonance imaging (MRI) scan findings and grade modifier of 2 for physical examination. However, Dr. Smith stated that the grade modifier for clinical studies was not used as part of the impairment rating for arthrodesis as described in Table 16-2 on page 508 of the A.M.A., *Guides*. He found that the grade modifiers resulted in a -5 adjustment or a

---

<sup>3</sup> OWCP and its medical adviser mistakenly indicate that the March 5, 2014 worksheet was signed by Dr. Smith, a reference to appellant's prior treating podiatrist, Dr. G. Trent Smith. The signature on the report is appellant's new treating podiatrist, Dr. Wade. In a February 24, 2014 letter to OWCP, appellant indicated that Dr. Smith died on February 4, 2014, and asked OWCP to approve a change in her physician to Dr. Wade, who was his partner. OWCP authorized the change in physicians on February 27, 2014.

<sup>4</sup> A.M.A., *Guides* 508.

grade A. Dr. Smith noted that this would be a class 3 impairment as he found it would be more of a neutral alignment than a malalignment as described in Table 16-2 of the A.M.A., *Guides*. He noted that a grade A would result in 37 percent lower extremity impairment.

In a May 9, 2014 response, Dr. Blum reviewed the report and noted that a review of the April 19, 2013 operative note did not reflect that anything more than a tibia/calcaneal fusion was performed. He asked OWCP to provide Dr. Smith with a copy of his report and also a copy of the operative notes dated September 25, 2012 (lateral ligament reconstruction) and April 9, 2013 for review and reconsideration.

On May 15, 2014 OWCP provided the medical evidence to Dr. Smith and requested a supplemental opinion. In an opinion received by OWCP on July 11, 2014,<sup>5</sup> Dr. Smith listed his assessment as left ankle-foot fusion status post significant sprain and cartilaginous injury involving arthrodesis of the tibia-talus joint. He indicated that this would indicate a class 1 impairment under ankle fusion as he found residual movement to be more of a neutral alignment than a misalignment as described in Table 16-2, page 508. Dr. Smith noted grade modifiers of 1 for functional history, a clinical studies grade modifier of 3 based on MRI scan findings, and a physical examination grade modifier of 2. He noted that this resulted in a net adjustment value of +2, which results in grade E, and that grade E indicates a 13 percent lower extremity impairment.

On July 17, 2014 OWCP again referred the case to Dr. Michael M. Katz, a Board-certified orthopedic surgeon and OWCP medical adviser, who agreed with Dr. Smith's calculations. Dr. Katz listed the diagnostic key factor under Table 16-2 of the A.M.A., *Guides*, as fusion ankle, neutral position, class 1, for a default value of 10 percent. He noted that the grade modifiers yielded a +2 modification, as this is the maximum, from the default value C, which he concluded equals class 1, grade E. Dr. Katz thus agreed with the assessed 13 percent impairment found by Dr. Smith.

On August 5, 2014 OWCP issued a schedule award for a 13 percent impairment to appellant's left lower extremity.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of FECA<sup>6</sup> and its implementing regulations<sup>7</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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set

---

<sup>5</sup> The report received on July 11, 2014 has the same date as the prior April 22, 2014 report. However, this is an error as the report is clearly new.

<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

forth in the specified edition of the A.M.A., *Guides*.<sup>8</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>9</sup> For impairment ratings calculated on or after May 1, 2009, OWCP should advise any physician evaluating permanent impairment to use the sixth edition.<sup>10</sup>

The sixth edition requires identifying the impairment class for the diagnosed condition, which is then adjusted by grade modifiers based on functional history, physical examination, and clinical studies.<sup>11</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>12</sup>

### ANALYSIS

OWCP accepted appellant's claim for sprain of the left ankle, other acquired deformities of the left ankle and foot, and left ganglion of tendon. Appellant underwent surgeries on her left ankle on September 25, 2012 and April 9, 2013.

The Board finds that OWCP properly determined that appellant had a 13 percent impairment to her left lower extremity. All medical opinions properly indicate that the applicable table of the A.M.A., *Guides* is Table 16-2.<sup>13</sup>

Dr. Wade, appellant's treating podiatrist, found that pursuant to Table 16-2, and applying the criteria of tibial-talar and talus/calcaneus, appellant had a class 4 diagnosis (neutral). He then applied grade modifiers which he determined yielded a grade A impairment of 50 percent. Dr. Blum noted that Dr. Wade did not provide descriptions of the grade modifiers and there was no description of a malalignment that would allow OWCP to determine impairment in this case. He also noted that he could find no information supporting that a subtalar arthrodesis had been performed. Dr. Blum recommended referral to a second opinion physician. The Board also notes that Dr. Wade's opinion is devoid of a narrative explanation that would assist OWCP in determining appellant's impairment. Furthermore, Dr. Wade states that appellant had a class 4 class of diagnosis (neutral). However, according to Table 16-2, class 4 is for a malalignment; class 3 is for neutral. Therefore, Dr. Wade's opinion is of limited value in determining a schedule award.

The second opinion physician, Dr. Smith, issued his initial opinion on April 22, 2014 and found that appellant had a 37 percent impairment of her lower extremity under Table 16-2 of the A.M.A., *Guides*. In making his calculations, he noted that she had a class 3 impairment as he

---

<sup>8</sup> *Id.*

<sup>9</sup> *See id.*; *Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.a (January 2010).

<sup>11</sup> A.M.A., *Guides* 494-531.

<sup>12</sup> *Id.* at 521.

<sup>13</sup> *Id.* at 508.

found a neutral alignment involving an arthrodesis of the tibia-talus joint and he noted that grade modifiers would bring appellant's impairment rating to a grade A or 37 percent impairment of the left lower extremity. Dr. Katz found that his review of the record did not reflect anything more than a tibia/calcaneal fusion and asked that Dr. Smith review a copy of the operative notes from appellant's September 25, 2012 and April 9, 2013 surgery. Dr. Smith reviewed these documents, and issued a new evaluation wherein, applying Table 16-2 of the A.M.A., *Guides*, he determined appellant's class of diagnosis to be a class 1 impairment under ankle fusion. He noted grade modifiers of 1 for functional history, 3 for clinical studies and 2 for physical examination. Dr. Smith determined that applying these grade modifiers yielded a class 1, grade E impairment, which as noted in Table 16-2, is equal to a 13 percent impairment of the left lower extremity. Dr. Katz agreed with Dr. Smith's calculations and conclusion.

The Board finds that Dr. Smith appropriately applied the sixth edition of the A.M.A., *Guides* determining that appellant had a 13 percent impairment of the left lower extremity. Appellant has not established any greater impairment.

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 not established that she had greater than 13 percent impairment to her left lower extremity for which she received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 5, 2014 is affirmed.

Issued: June 11, 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