

**United States Department of Labor
Employees' Compensation Appeals Board**

T.P., Appellant

and

**U.S. POSTAL SERVICE, ROSELAND POST
OFFICE, Chicago, IL, Employer**

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**Docket No. 15-0063
Issued: August 4, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 14, 2014 appellant filed a timely appeal of a September 3, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant established that she has more than 28 percent permanent impairment of the left lower extremity.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 3, 2014 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The facts relevant to this appeal are set forth below.

On February 24, 1998 appellant, then a 42-year-old letter carrier, filed an occupational disease claim alleging that she sustained a left foot injury in the performance of duty. OWCP accepted the claim for left tibialis posterior tendinitis under File No. xxxxxx872.³

On September 14, 2000 OWCP granted appellant a schedule award for 10 percent permanent impairment of her left lower extremity impairment. The period of the award was for 28.8 weeks and ran from March 20 to September 9, 2000.

On April 10, 2010 appellant filed a traumatic injury claim alleging that on April 8, 2010 she injured her left foot/heel sole plantar fasciitis under File No. xxxxxx929.⁴ OWCP accepted the claim for left plantar fibromatosis, left Achilles tendinitis, left tibialis tendinitis, and left rupture of Achilles tendon.⁵

By decision dated January 27, 2011, OWCP granted appellant an additional schedule award for 15 percent permanent impairment of the left lower extremity. It noted that appellant had previously received a schedule award for 10 percent permanent impairment of the left lower extremity resulting in a total 25 percent permanent impairment of the left lower extremity impairment.

Appellant appealed the January 27, 2011 decision to the Board on April 26, 2011. By decision dated February 27, 2012, the Board set aside the January 27, 2011 schedule award decision and remanded for further development and a *de novo* decision regarding whether appellant had additional permanent impairment of the left lower extremity for schedule award purposes.⁶

By decision dated May 11, 2012, OWCP granted appellant a schedule award for 28 percent permanent impairment of the left lower extremity, less the 25 percent previously awarded. Thus, appellant was issued an additional schedule award for three percent permanent impairment of the left lower extremity.

On March 18, 2013 appellant filed a claim for an additional schedule award.

In a letter dated March 29, 2013, OWCP requested that Dr. Joe M. George, a treating podiatrist, provide an opinion regarding appellant's permanent impairment using the sixth edition

³ OWCP assigned File No. xxxxxx872.

⁴ OWCP assigned File No. xxxxxx929.

⁵ Appellant retired from the employing establishment effective May 31, 2014.

⁶ Docket No. 11-1225 (issued February 27, 2012).

of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In an April 25, 2013 report, Dr. George diagnosed foot, toe, and ankle osteoarthritis, posterior tibial tendinitis, and ankle pain. Using “Grid” 16-2 of the A.M.A., *Guides*, he concluded that appellant had 57 percent permanent impairment based on the regional foot and ankle grid and 40 percent permanent impairment of the left lower extremity based on posterior tibial strain with fixed deformity. Dr. George found a 16 percent whole person impairment which he classified as a severe impairment.

On May 18, 2013 Dr. Christopher Gross, an OWCP district medical adviser (DMA) reviewed the medical evidence including Dr. George’s April 24, 2013 report and noted that appellant underwent a triple arthrodesis on May 30, 2012 and was previously awarded a schedule award for 28 percent permanent impairment for her posterior tibial tendon dysfunction. However, the DMA letter detailing how that rating was calculated was not received. Dr. Gross noted that he would provide an impairment rating once he is able to review the previous rating.

In a June 16, 2013 report, Dr. Gross noted that appellant underwent a triple arthrodesis on May 30, 2012 and had been awarded schedule awards for 28 percent permanent impairment for her posterior tibial tendon dysfunction. He identified the diagnosis as a triple arthrodesis in neutral position, which yielded a default grade of 10 percent using Table 16-2, page 508. The medical adviser applied a grade modifier of 1 for functional history as appellant had a mild deficit due to an antalgic gait using Table 16-6, page 516 and a grade modifier of 2 for physical examination using Table 16-7, page 517. Using the net adjustment formula he calculated a net adjustment of +1 or grade D modifier. This resulted in a 12 percent permanent impairment of the left lower extremity. Dr. Gross stated that appellant was not entitled to an additional schedule award as “the triple arthrodesis was the treatment for the posterior tibial tendinitis.” The date of maximum medical improvement was April 25, 2013, the date of Dr. George’s impairment rating.

In a July 24, 2013 report, Dr. George diagnosed foot, toe, and ankle osteoarthritis, posterior tibial tendinitis, and ankle pain. Using Table 16-2 of the A.M.A., *Guides*, Dr. George again concluded that appellant had a 57 percent permanent impairment based on the regional foot and ankle grid and a 40 percent permanent left lower extremity impairment based on posterior tibial strain with fixed deformity. He found a 16 percent whole person impairment which he classified as a severe impairment. Dr. George noted that the weakening due to the combination of appellant’s triple arthrodesis, posterior tibial dysfunction, weakening Achilles due to plantar fibromatosis and gastrocnemius recession, and fixed hind foot due to the triple arthrodesis led to a greater lower extremity and whole body impairment.

In an addendum to his June 16, 2013 report, OWCP medical adviser Dr. Gross reviewed Dr. George’s July 24, 2013 note, which he opined was insufficient to change his impairment rating as Dr. George made “no mention of the positioning of the triple arthrodesis which can have profound effects on the impairment rating.” He stated that, if an alignment was provided, he would reconsider appellant’s impairment rating. Based on the medical review, the medical adviser opined that there was no additional evidence warranting a change in appellant’s impairment rating.

By decision dated September 9, 2013, OWCP denied appellant's request for an additional schedule award for the left lower extremity.

On November 13, 2013 appellant requested reconsideration and submitted an October 30, 2013 addendum from Dr. George in support of her request. In his addendum, Dr. George reported that appellant continued to have pain on palpation of her posterior tibial tendon, her valgus deformity was approximately seven degrees at the heel, her ability to ambulate is severely limited due to her triple arthrodesis, she has first metatarsal elevatus, signs of ankle joint level anterior impingement with dorsiflexion, and concurrent weakness at the plantar flexion surgical site.

On January 17, 2014 OWCP medical adviser Dr. Gross reviewed Dr. George's October 30, 2013 addendum report. He identified the diagnosis as a triple arthrodesis in mild valgus alignment as yielding a default grade of 16 percent. The medical adviser applied a grade modifier of 1 for functional history as appellant had a mild deficit due to an antalgic gait using Table 16-6, page 516 and a grade modifier of 2 for physical examination using Table 16-7, page 517. Using the net adjustment formula he calculated a net adjustment of -1 or grade B modifier. This resulted in a 15 percent left lower extremity permanent impairment. The medical adviser stated that appellant was not entitled to an additional schedule award as "the triple arthrodesis was the treatment for the posterior tibial tendinitis" and because the impairment rating was "less than the previous impairment rating for the same diagnosis." The date of maximum medical improvement was April 25, 2013, the date of Dr. George's impairment rating.

By decision dated January 31, 2014, OWCP denied modification of its prior decision.

OWCP subsequently received additional medical information from Dr. George dated February 3, 2014 which included a prescription, a duty status report (Form CA-17), and a work status report indicating appellant was restricted to sedentary work. She also submitted Health Information Management progress notes, and an operative report from Provena Saint Joseph dated May 30, 2012.

On May 31, 2012 Dr. James D. Wright, an examining physician, noted a history of the current illness, provided physical examination findings and diagnosed hypertension with probable borderline diabetes. He stated appellant was doing well following surgery performed on May 30, 2012.

In a May 30, 2012 operative report, Dr. George stated that appellant underwent surgery for her left foot, left posterior tibial tendon repair, and gastrocnemius recession.

Appellant appealed the January 31, 2014 decision to the Board on March 12, 2014.

Subsequent to appellant's appeal to the Board, OWCP received additional evidence, including medical evidence from 2012 and physical therapy notes that were previously submitted and considered. The record also contains chart notes dated March 6, and May 28, 2014 from Dr. George. The March 6, 2014 chart note details February 3, 2014 history of illness and progress notes from a February 3, 2014 office visit while the May 28, 2014 chart note contained details of history of illness and progress notes from an April 7, 2014 office visit. Dr. George noted that appellant was seen for a follow up visit for her employment-related left ankle and foot injury and left trip arthrodesis. He noted that appellant was able to tolerate a sedentary job

requiring no mail delivery and minimal ambulation. Dr. George indicated that appellant was capable of sedentary work with minimal ambulation and no mail delivery.

In an April 18, 2014 work status report, Dr. George indicated that appellant was capable of working with restrictions which included no mail delivery.

In an order dated August 1, 2014, the Board set aside the January 31, 2014 OWCP decision and remanded for consolidation of OWCP File Nos. xxxxxxxx872 and xxxxxxx929, to be followed by any necessary further development and a *de novo* decision on appellant's entitlement to an additional schedule award.⁷

In chart notes dated August 20, 2014 with an injury history and progress report from an August 12, 2014 office visit, Dr. George noted that appellant continued to have chronic foot issues which are aggravated by standing and walking and that she has retired.

On August 27, 2014 OWCP followed the Board's instructions and combined OWCP File Nos. xxxxxxx929 and xxxxxxx872, with OWCP File No. xxxxxxx929 as the master file number.

By decision dated September 3, 2014, OWCP denied modification.

LEGAL PRECEDENT

The schedule award provision of FECA⁸ and its implementing regulations⁹ 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.¹⁰ Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.¹¹ The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).¹²

⁷ Docket No. 14-914 (issued August 1, 2014).

⁸ 5 U.S.C. § 8107.

⁹ 20 C.F.R. § 10.404.

¹⁰ *Id.* See *C.M.*, Docket No. 09-1268 (issued January 22, 2010); *Billy B. Scoles*, 57 ECAB 258 (2005).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claim*, Chapter 2.808.6(a) (February 2013); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹² A.M.A., *Guides* (6th ed., 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

In addressing lower extremity impairments, the sixth edition requires identifying the impairment Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹³

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through OWCP 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.

ANALYSIS

OWCP accepted the conditions of left tibialis posterior tendinitis, left plantar fibromatosis, left Achilles tendinitis, left tibialis tendinitis, and left rupture of Achilles tendon. It denied appellant's request for an additional schedule award as she had previously received schedule awards totaling a 28 percent left lower extremity impairment under OWCP File No. xxxxxx872.

In support of her claim for an additional schedule award appellant submitted reports from Dr. George, a treating podiatrist. In reports dated April 24, July 24, and October 30, 2013, Dr. George concluded that appellant had 57 percent permanent impairment based on the regional foot and ankle grid and a 40 percent left lower extremity impairment based on posterior tibial strain with fixed deformity using Table 16-2. Dr. George found 16 percent whole person impairment based on appellant's severe impairment. While Dr. George referenced Table 16-2 (which he referred to as Grid 16-2), he did not identify the specific page number for the Table he relied on in the A.M.A., *Guides* or otherwise explain how he arrived at his 57 percent and 40 percent permanent impairment determinations. Further, while the A.M.A., *Guides* provide for impairment to the individual member and to the whole person, FECA does not allow schedule awards for impairment to the whole person.¹⁴ Thus, Dr. George's July 24 and October 30, 2013 reports are insufficient to establish that appellant is entitled to a schedule award for an additional impairment.

OWCP medical adviser Dr. Gross reviewed Dr. George's reports and found appellant was not entitled to an additional schedule award. In the June 16, 2013 report, which was based on review of the April 24, 2013 report by Dr. George, the medical adviser determined that appellant had a class 1 impairment under Table 16-2 for triple arthrodesis in neutral position, which yielded a default value of 10 percent. He applied a grade modifier of 1 for functional history due to her antalgic gait and a grade modifier of 2 for physical examination findings. After utilizing the net adjustment formula, he concluded that appellant had a 12 percent permanent impairment of the left lower extremity. On January 17, 2014, the medical adviser reviewed Dr. George's October 30, 2013 addendum report and using Table 16-2, determined appellant had a class 2 impairment under Table 16-2 for triple arthrodesis with mild valgus alignment, which yielded a default value of 16 percent impairment. He applied a grade modifier of 1 for functional history due to her antalgic gait, which he found to be a mild deficit, and a grade modifier of 2 for

¹³ A.M.A., *Guides* 521. *J.B.*, Docket No. 09-2191 (issued May 14, 2010).

¹⁴ *Phyllis F. Cundiff*, 52 ECAB 439 (2001); *John Yera*, 48 ECAB 243 (1996).

physical examination findings of some moderate palpatory findings. After utilizing the net adjustment formula, the medical adviser concluded that appellant had a total at 15 percent permanent impairment of the left lower extremity.

The Board finds that an OWCP medical adviser properly applied the A.M.A., *Guides* based on the most recent reports of the treating physician Dr. George. Dr. George in his addendum of October 30, 2013 noted that the position of appellant's valgus deformity was approximately seven degrees at the heel. This comports with the finds in the DMA's report of January 17, 2014 were based on De. George's report he determined that appellant had a 15 percent lower extremity permanent impairment using the class 2 impairment under Table 16-2 for triple arthrodesis with mild alignment with the applicable grade modifiers.

CONCLUSION

The Board finds that appellant has not established that she has more than 28 percent permanent impairment of the left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 3, 2014 is affirmed.¹⁵

Issued: August 4, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

¹⁵ James A. Haynes, Alternate Judge participated in the original decision but was no longer a member of the Board effective November 16, 2015.