

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

A.M., Appellant)	
)	
and)	Docket No. 16-0499
)	Issued: June 28, 2016
U.S. POSTAL SERVICE, POST OFFICE,)	
Salem, OR, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 21, 2016 appellant filed a timely appeal from a November 2, 2015 merit decision and a December 17, 2015 nonmerit 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

ISSUES

The issues are: (1) whether appellant met her burden in establishing permanent impairment for schedule award purposes due to the accepted left ankle sprain; and (2) whether OWCP properly denied appellant's request for reconsideration of the, merits pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence after OWCP rendered its December 17, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On February 26, 2014 appellant, then a 56-year-old mail carrier, sustained a traumatic injury in the performance of duty when, as part of her job, she walked on a swollen and painful foot. She indicated that she had a prior condition and that she was required to work beyond her work restrictions. OWCP accepted the claim of left ankle sprain. Appellant stopped work that day and returned to work on March 3, 2014 in a limited-duty position.

Initial medical reports assessed left foot sprain and indicated that appellant had a history of foot tendinitis and tendinosis. A February 26, 2014 left foot x-ray revealed no acute osseous abnormality and mild mid-foot degenerative changes.

On June 19, 2015 appellant filed a claim for a schedule award (Form CA-7).

By letter dated June 23, 2015, OWCP advised of the type of evidence needed to establish entitlement to a schedule award. It particularly requested that appellant provide a physician's opinion addressing permanent impairment pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*).

By decision dated August 20, 2015, OWCP denied appellant's request for a schedule award because no medical evidence or rating examination report was received.

Appellant requested reconsideration on September 3, 2015. In support of the request, she submitted an August 12, 2015 report from Dr. Timothy Borman, a Board-certified osteopath specializing in orthopedic surgery, who advised that she complained of left ankle pain. Dr. Borman noted that appellant had an onset of left ankle pain in 2013 with no particular injury. He indicated that on February 26, 2014 appellant's supervisor required her to walk 45 minutes at a time despite the fact that her work restrictions for an earlier accepted right foot condition limited her walking to 15 minutes. Dr. Borman detailed appellant's treatment history and noted that she had preexisting degenerative arthritis in the mid foot and forefoot. Examination of the left foot revealed no loss of strength, no ankyloses, no sensory changes, swelling of the lateral aspect of the left mid foot, and reduced range of motion. Dr. Borman opined that appellant's only measurable impairment was limited range of motion and attributed this to her preexisting degenerative conditions of the left foot and ankle.

On October 14, 2015 OWCP forwarded a copy of the medical record and a statement of accepted facts to an OWCP medical adviser for an opinion as to appellant's entitlement to a schedule award. In an October 20, 2015 report, the medical adviser opined that she did not have left foot impairment in accordance with the sixth edition of the A.M.A., *Guides*. He noted that there were no significant objective abnormal findings of muscle or tendon injury at the date of maximum medical improvement; therefore, using Table 16-2 page 501 of the A.M.A., *Guides*, Foot and Ankle Regional Grid, appellant did not have a ratable impairment.

By decision dated November 2, 2015, OWCP denied modification of its prior decision as medical evidence was insufficient to establish left foot impairment related to the accepted condition.

Appellant requested reconsideration on December 6, 2015. No evidence or argument accompanied her request.

By decision dated December 17, 2015, OWCP denied appellant's request for reconsideration without a merit review.

On appeal, appellant argued that she followed the proper procedure and that she mailed an impairment rating to OWCP on December 5, 2015.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA³ and its implementing regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of use of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized 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 forth in the specified sixth edition of the A.M.A., *Guides*.⁵

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).⁶

OWCP 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 in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to meet her burden of proof to establish impairment of her left lower extremity for schedule award purposes. OWCP accepted the claim for left ankle sprain. Appellant claimed a schedule award and submitted an impairment rating from Dr. Borman.

In his August 12, 2015 report, Dr. Borman, detailed appellant's treatment history and noted that she had preexisting degenerative arthritis in the mid foot and forefoot. Examination of

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁶ A.M.A., *Guides* 521. J.B., Docket No. 09-2191 (issued May 14, 2010).

⁷ *Supra* note 5 at Chapter 2.808.6(f) (February 2013).

the left foot revealed no loss of strength, no ankyloses, no sensory changes, swelling of the lateral aspect of the left mid foot, and reduced range of motion. Dr. Borman opined that appellant's only measurable impairment was limited range of motion and attributed this to her preexisting degenerative conditions of the left foot and ankle. As this report indicated that her impairment was not due to the accepted left ankle sprain, it is not sufficient to establish that she was entitled to a schedule award.⁸

Consistent with its procedures,⁹ OWCP properly referred the matter to an OWCP medical adviser for an opinion regarding appellant's permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*. In an October 20, 2015 report, the medical adviser opined that she did not have left foot impairment in accordance with the sixth edition of the A.M.A., *Guides*. He noted that there were no significant objective abnormal findings of muscle or tendon injury at the date of maximum medical improvement. The medical adviser opined that appellant did not have a ratable impairment under Table 16-2, page 501, the sixth edition of the A.M.A., *Guides*.

The Board finds that appellant failed to submit medical evidence establishing left lower extremity impairment warranting a schedule award.

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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁰ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.¹¹ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.¹²

ANALYSIS -- ISSUE 2

In a November 2, 2015 decision, OWCP failed to modify its prior decision finding that appellant did not establish permanent impairment related to the accepted left foot sprain.

⁸ See *Veronica Williams*, 56 ECAB 367 (2005) (a schedule award can be paid only for a condition related to an employment injury; the claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment).

⁹ *Id.*

¹⁰ 20 C.F.R. § 10.606(b)(3).

¹¹ *Id.* at § 10.607(a).

¹² *Id.* at § 10.608(b).

Appellant submitted a timely request for reconsideration on December 6, 2015, which was denied without a merit review.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. The underlying issue in this case is whether appellant established that the accepted left ankle sprain resulted in permanent impairment of the left foot. This is a medical issue. Appellant failed to submit any relevant and pertinent new evidence in support of her reconsideration request.

Furthermore, appellant neither showed that OWCP erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by OWCP. Because she failed to meet one of the standards enumerated under section 8128(a) of FECA, she was not entitled to further merit review of her claim.

CONCLUSION

The Board finds that OWCP properly found that appellant failed to meet her burden of proof in establishing permanent impairment due to the accepted sprained left ankle and that OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 17 and November 2, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 28, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board