United States Department of Labor
Employees' Compensation Appeals Board

D.D., Appellant	)	
and	)	**Docket No. 16-1546**
	)	**Issued: April 19, 2017**
DEPARTMENT OF THE ARMY, ARMY DEPOT, Tobyhanna, PA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 27, 2016 appellant filed a timely appeal from a June 1, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish permanent impairment causally related to his accepted right ankle condition, warranting a schedule award under 5 U.S.C. § 8107.

FACTUAL HISTORY

Appellant, a 51-year-old electronics mechanic, injured his right ankle on December 1, 2013 when he slipped and fell after stepping off a loading dock onto a patch of snow-covered ice. He filed a traumatic injury claim (Form CA-1), which OWCP accepted for right ankle fracture.

Appellant underwent an open reduction/internal fixation procedure surgery on his right ankle on December 10, 2013. The procedure was performed by Dr. Christopher Henderson, Board-certified in orthopedic surgery.

On December 17, 2014 appellant filed a schedule award claim (Form CA-7) based on a partial loss of use of his right foot.

By letter dated January 9, 2015, OWCP informed appellant that it required additional medical evidence in order to determine whether he was entitled to a schedule award. It advised him that he was required to provide a medical opinion from a physician which included findings showing how he arrived at an impairment rating and a diagnosis on which the impairment was based. OWCP further advised that the opinion should state exactly which section of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* (hereinafter A.M.A., *Guides*)[3] the physician used to calculate the rating. It afforded appellant 30 days to submit the additional evidence. Appellant did not submit any additional medical evidence.

By decision dated July 16, 2015, OWCP found that appellant had no ratable impairment causally related to his accepted right ankle condition and therefore was not entitled to a schedule award.

By letter dated July 21, 2015, appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

In a July 29, 2015 report, Dr. Albert D. Janerich, Board-certified in physical medicine and rehabilitation, advised that appellant was recovering from his December 10, 2013 right ankle injury. He reported that the injury had resulted in a right leg impairment which also caused problems in his right knee. Dr. Janerich reported that appellant underwent a magnetic resonance imaging (MRI) scan of his right knee, the results of which showed some meniscal disease and arthritis.

In a November 10, 2014 report, received by OWCP on October 26, 2015, Dr. Gerald E. Dworkin, an osteopath Board-certified in physical medicine and rehabilitation, found that

[3] 6th ed. 2009.

appellant had 8 to 10 percent permanent impairment of the lower extremity. He advised that appellant underwent right ankle surgery on December 10, 2013, a procedure which entailed an open reduction, internal fixation with medial screws and lateral plate fixation for the fracture site. Dr. Dworkin noted that appellant underwent almost four months of physical therapy and then returned to work on approximately February 24, 2014. He reported that appellant continued to complain of pain in and around the right knee, particularly in the anterior aspect and infrapatellar region. Dr. Dworkin noted, however, that his MRI scan demonstrated no soft tissue or fracture component. He noted that appellant experienced periodic right knee swelling and pain, and stiffness with mobility, standing and sitting for long periods of time.

Dr. Dworkin advised that appellant had a negative Lachman's maneuver and no significant deformity in the right leg, with normal muscle strength, sensation and deep tendon reflexes. He noted that, under the A.M.A., *Guides*,[4] appellant reached maximum medical improvement, with minimal, residual symptomatology as a result of his fractures, including intermittent pain, swelling, and stiffness, and no significant abnormal angulations or deformity at the knee joint.

By decision dated June 1, 2016, an OWCP hearing representative affirmed the July 16, 2015 decision. She noted that Dr. Dworkin did not explain his rating or the specific examination findings on which he based his lower extremity rating. OWCP's hearing representative indicated that, absent evidence of a ratable impairment due to his employment from appellant's treating physician or another examining physician, there was no basis for a schedule award.

LEGAL PRECEDENT

The schedule award provision of FECA[5] and its implementing regulations[6] 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.[7] Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009). 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.[8]

[4] Dr. Dworkin did not indicate what edition or what section of the A.M.A., *Guides* he used in rendering his impairment rating.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id.*

[8] *Veronica Williams*, 56 ECAB 367, 370 (2005).

ANALYSIS

OWCP accepted the condition of right ankle fracture. Dr. Dworkin treated appellant for his right ankle symptoms and submitted a November 10, 2014 report supporting a schedule award for the lower extremity. However, his report merely noted the history of appellant's right ankle injury, indicated MRI scan findings of the right knee, noted findings on examination, and found summarily that appellant had 5 to 10 percent permanent impairment rating of the lower extremity pursuant to the A.M.A., *Guides*. Dr. Dworkin did not indicate the specific anatomical area to which this rating applied or explain the basis of this rating. OWCP had requested that appellant submit a thorough, rationalized medical report containing an impairment evaluation rendered in conformance with the applicable tables and protocols of the sixth edition of the A.M.A., *Guides.* Appellant, however, did not provide such a report. He submitted no additional impairment evaluations or ratings. As appellant failed to provide an impairment rating rendered in accordance with the applicable protocols and tables of the A.M.A., *Guides*, he did not meet his burden of proof to establish ratable permanent impairment attributable to his accepted right ankle condition. Therefore, he was not entitled to a schedule award.[9]

Appellant may request a schedule award or increased schedule award at any time 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 met his burden of proof to establish permanent impairment causally related to his accepted right ankle condition, warranting a schedule award under 5 U.S.C. § 8107.

[9] The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. *See Peter C. Belkind*, 56 ECAB 580, 585 (2005).

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2017
Washington, DC

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

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

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