

ISSUE

The issue is whether appellant has established permanent impairment warranting a schedule award.

On appeal counsel contends that OWCP erred in the weighing of the medical evidence and failed to consider all of appellant's accepted conditions.

FACTUAL HISTORY

On September 26, 2003 appellant, then a 40-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1) alleging that on September 23, 2003 she sustained injuries to her left foot and leg when she fell down a flight of stairs due to a handrail giving way.³ She stopped work on September 23, 2003 and returned to full-duty work on November 4, 2003. OWCP accepted the claim for left foot neuritis, left foot and ankle tenosynovitis and right elbow and forearm multiple superficial lacerations/open wounds without complications.⁴

On February 13, 2014 appellant filed a claim for a schedule award (Form CA-7).

In a February 25, 2015 report, Dr. Catherine Watkins-Campbell, an examining Board-certified physician in occupational and family medicines, concluded that appellant had four percent left lower extremity permanent impairment using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). She provided an injury history, noted medical records reviewed, and physical examination findings. Dr. Watkins-Campbell noted the primary impairment diagnosis as left foot neuritis under diagnosis-based impairment (DBI) method of impairment rating and left sural nerve under peripheral nerve impairment. She found DBI was not applicable and based her impairment rating on the sural nerve. Dr. Watkins-Campbell identified a class 1 for the sural nerve based on CRPS II using Table 16-2, page 534. She assigned a grade modifier of 2 for functional history and found clinical studies were nonapplicable. Applying the net adjustment formula of functional history minus clinical diagnosis (GMFH 2 - CDX 1 = 1), resulted moving to the right one or grade D with four percent left lower extremity impairment.

On August 6, 2015 OWCP referred Dr. Watkins-Campbell's report to an OWCP district medical adviser (DMA) for review. In an August 15, 2015 report, Dr. Morley Slutsky, the selected DMA Board-certified in occupational medicine, recommended a second opinion evaluation as Dr. Watkins-Campbell's findings were inconsistent with the objective tests and prior medical reports. A statement of accepted facts, which Dr. Berman reviewed, indicated that appellant suffered a left foot fracture around 1996 and subsequently underwent surgeries in 2000 or 2001 and 2002.

³ The record reflects that appellant had a preexisting foot injury, when she fell at home in 1996 and sustained a left foot fracture for which she underwent surgical repair in 2000 or 2001, and again in 2002.

⁴ The record does not reflect that appellant received FECA wage-loss compensation benefits.

On September 3, 2015 OWCP referred appellant to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, for a second opinion on whether appellant had permanent impairment of her right upper extremity and left foot. In a report dated September 16, 2015, Dr. Obianwu noted appellant's occupational history, employment injury and medical histories, medical records he reviewed, and physical examination findings. A physical examination revealed full range of motion in the right elbow, wrist, hands and shoulder, no problems with ambulating, no subtalar joint motion, a mild valgus left foot, and areas of vague left foot medial sensory compromise. Dr. Obianwu diagnosed left foot status post triple arthrodesis, no evidence of left foot sural neuritis, and moderate left foot severe degenerative arthritis of the mid tarsal joints. He opined that maximum medical improvement had been reached in late 2005 when the left foot arthrodesis would have been solid and that neither the condition nor procedure had been accepted as employment related. With respect to upper extremity impairment, Dr. Obianwu observed that all the lacerations had healed and there was normal function. Thus, he concluded that appellant had a zero percent right upper extremity permanent impairment. Next, Dr. Obianwu found no evidence of accepted condition of neuritis. Thus, the impairment rating for the left lower extremity was zero. Dr. Obianwu observed that appellant's left foot impairment was unrelated to her employment injury and was due to a nonemployment triple arthrodesis, which was solid.

On November 19, 2015 OWCP referred Dr. Obianwu's report to a DMA for review. In a November 23, 2015 report, Dr. Arnold T. Berman, the selected DMA and Board-certified orthopedic surgeon, concurred with Dr. Obianwu's finding of zero percent left lower extremity permanent impairment. He noted that appellant was referred to an orthopedic specialist as neither Dr. Slutsky nor Dr. Watkins-Campbell were orthopedic specialists and because there were a variety of opinions in the record. Dr. Berman applied Dr. Obianwu's examination findings to Table 16-12, page 534, which was the table used by Dr. Watkins-Campbell, and assigned a class 0 for sural nerve with no objective sensory deficits. He assigned September 16, 2015, the date of Dr. Obianwu's examination, as the date of maximum medical improvement.

By decision dated December 1, 2015, OWCP denied appellant's claim for a schedule award for her left lower extremity and right upper extremity. It relied upon the opinion of Dr. Obianwu, a second opinion Board-certified orthopedic surgeon, who found no ratable impairment in either the right upper extremity or the left lower extremity.

On December 14, 2015 appellant requested a hearing before an OWCP hearing representative. A hearing was held on August 9, 2016.

By decision dated October 24, 2016, OWCP's hearing representative affirmed the denial of appellant's schedule award claim. The hearing representative found that appellant had not established entitlement to a schedule award as the medical reports submitted by appellant failed to provide an adequate history of the claim and appellant's prior medical history to establish permanent impairment due to her accepted injury.

LEGAL PRECEDENT

Under section 8107 of FECA⁵ and section 10.404 of the implementing federal regulations,⁶ schedule awards are payable for permanent impairment of specified body members, functions or organs. FECA, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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

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).⁸ Under the sixth edition, the evaluator identifies the impairment Class for Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).⁹ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹⁰

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.¹¹

ANALYSIS

OWCP accepted that appellant sustained left foot neuritis, left foot and ankle tenosynovitis and right elbow and forearm multiple superficial lacerations/open wounds without complications due to the accepted September 23, 2003 employment injury. By decision dated December 1, 2015, OWCP denied appellant's claim for a schedule award. An OWCP hearing representative affirmed the denial in an October 24, 2016 decision.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404

⁷ *D.J.*, 59 ECAB 620 (2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁸ A.M.A., *Guides* 3 (6th ed. 2009), section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

⁹ *Id.* at 383-419 (6th ed. 2009).

¹⁰ *Id.* at 411.

¹¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013). See *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

The Board finds that OWCP properly denied appellant's claim for a schedule award based on the opinions of Dr. Obianwu, the second opinion physician, and Dr. Berman, the selected DMA.

Appellant submitted a February 25, 2015 report from Dr. Watkins-Campbell who found four percent left lower extremity permanent impairment based on sural nerve sensory impairment or CRPS II using Table 16-2, page 534. However, Dr. Watkins-Campbell did not sufficiently explain why the accepted condition left foot neuritis caused sural nerve sensory deficits or CRPS II especially since a January 19, 2004 EMG found no deficits. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to her employment.¹²

Appellant was referred to Dr. Obianwu for a second opinion evaluation regarding the degree and extent of any permanent impairment of her left lower extremity and right upper extremity at the request of the DMA, Dr. Slutsky. Dr. Obianwu examined appellant on September 16, 2015 and concluded that she had no permanent impairment of her right upper extremity or her left lower extremity. He reviewed appellant's medical record and employment injury history. A physical examination revealed full range of motion in the right upper extremity and no evidence of left foot sural neuritis. Based on these findings, Dr. Obianwu determined that appellant had zero percent permanent impairment of the right upper extremity and zero percent permanent impairment of the left lower extremity.

In accordance with its procedures, OWCP referred the evidence of record to its DMA, Dr. Berman, who reviewed Dr. Obianwu's report and relevant medical evidence and agreed appellant had no permanent impairment of the left lower extremity or the right upper extremity based on the accepted conditions.

The record contains no other current medical evidence in conformance with the sixth edition of the A.M.A., *Guides* establishing permanent impairment of appellant's right upper extremity or left lower extremity. The Board finds that appellant has not met her burden of proof.

On appeal counsel contends that OWCP erred in the weighing of the medical evidence and failed to consider all of appellant's conditions. Contrary to counsel's contentions, OWCP considered the medical evidence relevant to permanent impairment and explained why it found the medical evidence submitted by appellant insufficient to warrant a schedule award. As noted above appellant must establish that permanent impairment is due to the accepted employment conditions. Schedule awards are not issued when the impairment is caused solely by a nonemployment-related condition. It is appellant's burden of proof to establish that the employment injury contributed to a permanent impairment of a scheduled member or function of the body.¹³

¹² *Veronica Williams*, 56 ECAB 367 (2005).

¹³ *See D.E.*, Docket No. 16-463 (issued May 17, 2016).

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 appellant has not met her burden of proof to establish permanent impairment of a scheduled member causally related to her accepted medical conditions.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 24, 2016 is affirmed.

Issued: July 24, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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