

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

S.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Oklahoma City, OK, Employer**

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**Docket No. 17-1457
Issued: November 24, 2017**

Appearances:
Appellant, pro se
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 June 19, 2017 appellant filed a timely appeal from an April 26, 2017 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.

ISSUE

The issue is whether appellant has more than five percent permanent impairment of her right lower extremity, for which she has previously received a schedule award.

FACTUAL HISTORY

On July 30, 2008 appellant, then a 49-year-old distribution window clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained a right foot injury as a result of standing on her feet for six hours per day. She did not stop work, but continued to work

¹ 5 U.S.C. § 8101 *et seq.*

limited duty. By decision dated October 22, 2008, OWCP accepted the claim for right Achilles tendinitis, right calcaneal spur, and right plantar fibromatosis. The acceptance of the claim was later expanded to include “right neoplasm of uncertain behavior connective and other soft tissue and benign neoplasm of connective and other soft tissue of right lower limb including the hip.”²

On April 16, 2012 appellant filed a claim for a schedule award (Form CA-7).

In support of her claim, appellant submitted a March 12, 2012 impairment evaluation from Dr. M. Stephen Wilson, a podiatrist. Dr. Wilson provided physical examination findings and review of diagnostic testing. He reported that appellant had reached maximum medical improvement (MMI) and opined that she sustained five percent permanent impairment of the right foot/ankle due to chronic recurrent foot and ankle pain and range of motion weakness.³ Dr. Wilson reported that regional impairment was based on Table 16-2, Foot and Ankle Regional Grid, for Achilles tendinitis with mild motion deficits, resulting in permanent anatomical abnormalities and loss of function.⁴ This resulted in a class 1 impairment with a mid-range default value of five percent. Dr. Wilson assigned a grade modifier of 1 for functional history based on gait alteration secondary to an American Academy of Orthopedic Surgeons (AAOS) score of two,⁵ a grade modifier of 1 for physical examination due to mild palpatory findings,⁶ and grade modifier of 1 for clinical studies.⁷ Applying the net adjustment formula resulted in a score of zero $((1-1)+(1-1)+(1-1))$ which kept the rating at the default position of five percent permanent impairment of the right lower extremity.

OWCP routed a statement of accepted facts (SOAF) and the case file to Dr. Ronald Blum, Board-certified in internal medicine serving as an OWCP district medical adviser (DMA), for review and determination on whether appellant sustained a permanent partial impairment of the right lower extremity and date of MMI.

In an April 25, 2012 report, Dr. Blum reported that appellant reached MMI on March 12, 2012 and agreed with Dr. Wilson’s five percent right lower extremity permanent impairment rating.

By decision dated June 6, 2012, OWCP granted appellant a schedule award for five percent permanent impairment of the right lower extremity. The date of MMI was noted as

² On April 26, 2011 appellant underwent resection of retrocalcaneal spur of the right foot and decompression of right Achilles tendon. The record does not reflect that she received wage-loss compensation on the supplemental or periodic rolls under this claim for any period of disability.

³ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*).

⁴ *Id.* at 501, Table 16-2.

⁵ *Id.* at 516, Table 16-6.

⁶ *Id.* at 517, Table 16-7.

⁷ *Id.* at 519, Table 16-8.

March 12, 2012 and the award covered a period of 14.4 weeks from March 12 through May 5, 2012.

Appellant retired on January 31, 2013.

On September 6, 2016 appellant filed a claim for an increased schedule award (Form CA-7).

In support of her increased schedule award claim, appellant submitted an August 18, 2016 report from Dr. Donald E. Adams, Board-certified in physical medicine and rehabilitation. Dr. Adams provided findings on examination and noted complaints of pain in the heel and lateral aspect of the right foot. He diagnosed right Achilles tendinitis, calcaneal spur, right plantar fibromatosis, and benign soft tissue mass. Dr. Adams further noted that appellant had developed a lipoma of her right foot for which she underwent surgery on May 5, 2015. In accordance with the A.M.A., *Guides*, he identified a diagnosis of Achilles and peroneal tendon, mild motion deficits, class 1 with a default position of C at five percent.⁸ Dr. Adams assigned a grade modifier of 1 for functional history⁹ and a grade modifier of 2 for physical examination due to moderate palpatory findings.¹⁰ As no x-rays were obtained, he determined that a grade modifier for clinical studies was not applicable.¹¹ Applying the net adjustment formula, Dr. Adams subtracted 1, the numerical value of the class, from the numerical value of the grade modifier for each applicable component (functional history and physical examination) and then added those values, resulting in a net adjustment of 1 ((1-1) + (2-1)). Application of the net adjustment formula meant that movement was warranted one place to the right of class 1 default value grade C to grade D, yielding six percent permanent impairment of the right lower extremity.

OWCP routed the SOAF and the case file to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP DMA, for review and a determination on whether appellant sustained permanent impairment of the right lower extremity and date of MMI.

In a February 24, 2017 report, Dr. Katz reviewed Dr. Adam's report and concluded that appellant sustained no more than five percent permanent impairment of the right lower extremity for which she was previously granted a schedule award. He noted that Dr. Adams assigned a grade modifier of 2 for physical examination which resulted in the net adjustment of +1. Dr. Katz explained that the A.M.A., *Guides* provide that, "If a grade modifier, or non-key factor, was used for primary placement in the regional grid, it may not be used again in the impairment calculation."¹² He noted that the physical examination (motion deficit) was used for grid placement, and therefore, could not be used again in the net adjustment. As such, this reduced the net adjustment to zero, resulting in a default impairment of five percent permanent

⁸ *Supra* note 4.

⁹ *Supra* note 6.

¹⁰ *Supra* note 7.

¹¹ *Supra* note 4.

¹² *Id.* at 515-16.

impairment of the right lower extremity. Dr. Katz concluded that MMI was reached on August 18, 2016, the date of Dr. Adams' examination.

By letter dated March 2, 2017, OWCP requested that Dr. Adams review Dr. Katz's February 24, 2017 report for comment pertaining to appellant's right lower extremity impairment rating. Dr. Adams did not respond.

In an April 10, 2017 addendum report, Dr. Katz requested that OWCP provide him the older medical reports which authorized the previous five percent right lower extremity award so that overlapping impairments could be identified.

On April 19, 2017 OWCP provided Dr. Katz the additional medical reports and requested that he provide clarification pertaining to impairment of the right lower extremity.

In an April 22, 2017 amended report, Dr. Katz repeated his prior assertions explaining that physical examination could not be used in application of the net adjustment formula as motion deficit was used for grid placement. He concluded that appellant's adjustment resulted in the default value of five percent permanent impairment of the right lower extremity. Dr. Katz further determined that because the current five percent right lower extremity impairment rating was equal to the previous five percent awarded for the same condition/overlapping condition, there was no net additional award due.

By decision dated April 26, 2017, OWCP found that the medical evidence of record failed to establish that appellant was entitled to more than five percent permanent impairment of the right lower extremity as previously awarded.

LEGAL PRECEDENT

The schedule award provisions of FECA and its implementing regulations 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.¹³ 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.¹⁴

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).¹⁵ The Board has approved the use by OWCP of the A.M.A.,

¹³ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

¹⁴ *K.H.*, Docket No. 09-341 (issued December 30, 2011).

¹⁵ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (February 2013); *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

Guides for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.¹⁶

The A.M.A., *Guides* provide a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF). For lower extremity impairments, the evaluator identifies 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).¹⁷ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁸ Evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.¹⁹

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an 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.²⁰

ANALYSIS

OWCP issued a schedule award for five percent permanent impairment of the right lower extremity on June 6, 2012. The Board finds that appellant has not established that she has greater than the five percent permanent impairment of the right lower extremity previously awarded.

Appellant submitted an August 18, 2016 impairment evaluation from Dr. Adams who determined that she sustained six percent permanent impairment of the right lower extremity. Dr. Adams utilized the diagnosis of Achilles tendon, mild motion deficit, class 1 which resulted in a default impairment value of five percent. He assigned a grade modifier of 1 for functional history and a grade modifier of 2 for physical examination due to moderate palpatory findings. Application of the net adjustment formula resulted in movement one place to the right of class C to D for six percent permanent impairment of the right lower extremity.

Dr. Katz, serving as an OWCP DMA, disagreed with Dr. Adams' impairment rating and found that appellant was entitled to no more than the five percent previously awarded. The Board finds that the opinion of Dr. Katz is thorough and well rationalized.²¹ Dr. Katz utilized the case record and Dr. Adams' August 18, 2016 examination to calculate five percent permanent

¹⁶ *Isidoro Rivera*, 12 ECAB 348 (1961).

¹⁷ *Supra* note 3 at 493-531.

¹⁸ *Id.* at 521.

¹⁹ *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

²⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (March 2017).

²¹ *R.V.*, Docket No. 17-0731 (issued June 7, 2017).

impairment of the right lower extremity. The DMA did not disagree with Dr. Adams' findings and examination pertaining to appellant's right foot/ankle injury such that a conflict in medical evidence was created.²² Rather, he disagreed with his use of the A.M.A., *Guides* and explained that Dr. Adams could not use physical examination in the net adjustment formula because the grade modifier was used for placement in the class. The DMA provided rationale for his opinion, explaining that the A.M.A., *Guides* provide that, "If a grade modifier, or non-key factor, was used for primary placement in the regional grid, it may not be used again in the impairment calculation."²³ As Dr. Adams utilized physical examination findings for primary placement in the regional grid, it could not be used in application of the net adjustment formula. He was asked to provide a further response, but Dr. Adams did not reply. As such, Dr. Katz properly reported that this reduced the net adjustment to zero, resulting in the default value of five percent permanent impairment of the right lower extremity.

The Board notes that Dr. Katz also reviewed Dr. Wilson's prior March 12, 2012 impairment rating.²⁴ The DMA sufficiently explained that both physicians provided impairment ratings for the same condition, namely, the Achilles tendon. As such, appellant would not be entitled to an additional award of five percent for the present impairment as she was previously awarded five percent for the same condition.²⁵

Accordingly, the Board finds that Dr. Katz correctly applied the A.M.A., *Guides* to find that appellant had no more than five percent permanent impairment of the right lower extremity for which she had previously received a schedule award.²⁶ As such, OWCP properly determined that she was not entitled to an additional schedule award.²⁷

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 failed to establish more than five percent permanent impairment of the right lower extremity for which she previously received a schedule award.

²² See *J.J.*, Docket No. 14-1143 (issued December 10, 2014); *Mary L. Henninger*, 52 ECAB 408 (2001).

²³ *Supra* note 3 at 500.

²⁴ *L.W.*, Docket No. 12-1613 (issued February 19, 2013).

²⁵ The Board notes that appellant is not entitled to receive two awards for injury to the same body part. *L.M.*, Docket No. 09-690 (issued December 29, 2009).

²⁶ *Y.K.*, Docket No. 11-1623 (issued June 25, 2012).

²⁷ *C.H.*, Docket No. 16-1806 (issued March 9, 2017).

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 24, 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