United States Department of Labor
Employees' Compensation Appeals Board

L.J., Appellant	)	
and	)	**Docket No. 17-1533**
	)	**Issued: October 20, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Champaign, IL, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 5, 2017 appellant filed a timely appeal from a March 9, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 met her burden of proof to establish permanent impairment of her left foot for schedule award purposes.

FACTUAL HISTORY

On July 26, 2012 appellant, then a 42-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained plantar fasciitis of her left foot. She contended that the condition was caused by performing her repetitive work duties, including walking her mail delivery route on a daily basis. Appellant indicated that she first became aware of her

[1] 5 U.S.C. § 8101 *et seq.*

claimed condition on February 1, 2012 and first realized on the same date that it was caused or aggravated by factors of her federal employment.

OWCP accepted left plantar fasciitis. Appellant stopped work on August 10, 2012 on which date Dr. Michael Muscatella, an attending podiatrist, performed OWCP-approved left foot endoscopic plantar fasciotomy with cascade injection.[2]

There is no indication in the record that appellant continued to receive regular medical care for her left foot condition in the years immediately following her return to work in late-2012. She continued to perform her regular duties on a full-time basis without restrictions.

In a September 26, 2016 report, Dr. Eugene P. Lopez an attending Board-certified orthopedic surgeon, discussed appellant's factual and medical history and reported findings on physical examination.[3] He indicated that appellant exhibited mild pes planovalgus in her left foot, but that there were no other lesions or masses. Dr. Lopez found that appellant had inferomedial tenderness of her left hindfoot. Range of motion was normal in all areas tested in appellant's left foot, sensation was normal, and strength was 5/5 in all muscle groups tested. Dr. Lopez noted that appellant's reflexes were normal and symmetric, and that her gait pattern was normal with no limp. Examination of the rest of appellant's left lower extremity did not show any tenderness, deformity, or injury. Dr. Lopez found that there was no gross instability of the left lower extremity and that strength and tone were normal. He diagnosed "work-related left plantar fasciitis doing well [four] years status post left plantar fascial release at MMI [maximum medical improvement]" and indicated that he would order a functional capacity evaluation (FCE) for appellant.

In an October 26, 2016 report, Dr. Lopez discussed appellant's left foot condition and the medical treatment she had received for that condition. He referenced the plantar fasciotomy she had undergone on August 10, 2012 and her return to full-duty work without restrictions. Dr. Lopez provided results on examination from September 26, 2016 which were similar to those of September 26, 2016. He further noted that appellant underwent an FCE on October 25, 2016.[4] Dr. Lopez provided a summary of appellant's symptoms as reported in the October 25, 2016 FCE noting that she reported that her left foot pain generally was very minimal. Appellant reported that, when she did get left foot pain, it was a sharp pain in the heel. This pain was aggravated by walking barefoot, wearing shoes without orthotics (*i.e.*, heeled shoes, sandals), or wearing worn-out shoes.[5] Dr. Lopez noted that appellant reported that her current left foot symptoms ranged from 0 to 3 out of a scale of 10, with 10 being the worse.

[2] Appellant received disability compensation on the daily roll beginning August 10, 2012.

[3] Dr. Lopez's September 26, 2016 report is the first medical report in the record since late-2012.

[4] The record contains a copy of the October 25, 2016 FCE report which indicated that appellant was capable of performing light to medium work as classified under the U.S. Department of Labor's *Dictionary of Occupational Titles*.

[5] Appellant further reported that she experienced jolts of sharp pain one to two times per week while carrying her mail route at work and that rest and taking weight off her left foot helped relieve the pain. She denied having numbness or tingling in her left foot.

Dr. Lopez provided a permanent impairment rating utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*). He indicated that appellant's left plantar fascial fibromatosis constituted a class 1 condition under the diagnosis-based impairment (DBI) rating method of Table 16-2 (Foot and Ankle Regional Grid) on page 501. Dr. Lopez noted that, therefore, appellant had a default value of 1 percent for permanent impairment of her left lower extremity. He then calculated values for grade modifiers using Table 16-6 through Table 16-8 on pages 516 through 520. Dr. Lopez indicated that appellant had a functional history grade modifier of 1 due to her antalgic gait pattern corrected with footwear modifications. Appellant had a physical examination grade modifier of 1 due to minimal palpatory findings for her left foot, and a clinical studies modifier of 1 due to clinical studies confirming her diagnosis with mild pathology. Dr. Lopez found that application of the net adjustment formula on page 521 meant that there was no movement from the one percent default value on Table 16-2, which resulted in total permanent impairment of her left lower extremity of one percent.

On November 28, 2016 appellant filed a claim for compensation (Form CA-7) claiming a schedule award due to her accepted employment injury, left plantar fasciitis.

In February 2017 OWCP referred appellant's case to Dr. Jovito Estaris, a Board-certified occupational medicine physician serving as an OWCP medical adviser, to evaluate the extent of her permanent impairment under the standards of the sixth edition of the A.M.A., *Guides*.

In his February 21, 2017 report, Dr. Estaris reviewed the evidence of record, discussed appellant's left foot condition and course of treatment, including the left plantar fasciotomy performed on August 10, 2012, and noted that her left foot condition had reached MMI on October 26, 2016, the date of Dr. Lopez' evaluation. Dr. Estaris provided an impairment rating for appellant's left lower extremity under the standards of the sixth edition of the A.M.A., *Guides*. Under Table 16-2 on page 501, he applied the DBI rating method noting that appellant's left plantar fibromatosis fell under class 1 due to her significant palpatory findings on examination with a default value of one percent permanent impairment of her left lower extremity. Dr. Estaris calculated values for grade modifiers using Table 16-6 through Table 16-8 on pages 516 through 520. He noted that appellant had a functional history grade modifier of 0 because she had no antalgic gait, her left foot condition caused no interference with her daily activities, and she was performing her regular work. Appellant had a physical examination grade modifier of 1 due to findings of mild tenderness over her left hindfoot, and she had a clinical studies modifier of 0 because there was no clinical study supporting the diagnosis of plantar fibromatosis. Applying the net adjustment formula on page 521 resulted in movement two spaces to the left of the one percent default value on Table 16-2, which resulted in appellant having zero percent total permanent impairment of her left lower extremity. Dr. Estaris explained that his impairment rating differed from Dr. Lopez' calculation of one percent permanent impairment of the left lower extremity because Dr. Lopez had not evaluated the functional history and clinical studies grade modifiers in accordance with the standards of the sixth edition of the A.M.A., *Guides* and therefore used improper values in the net adjustment formula. He noted that Dr. Lopez found a functional history grade modifier of 1, but indicated that this finding was inappropriate under Table 16-6 because Dr. Lopez clearly reported that appellant had a normal gait pattern with no limp. Dr. Estaris further indicated that Dr. Lopez found a clinical studies modifier of 1 but advised that this was not correct because there was no

clinical study in the evidence of record, let alone one that supported a diagnosis of plantar fibromatosis/fasciitis.

In a March 9, 2017 decision, OWCP denied appellant's schedule award claim noting that she had not met her burden of proof to establish permanent impairment due to her accepted left foot condition. It found the weight of the medical evidence to rest with Dr. Estaris which found that appellant had no permanent impairment of her left lower extremity under the standards of the sixth edition of the A.M.A., *Guides*. OWCP noted that Dr. Estaris explained why Dr. Lopez' October 26, 2016 rating calculation, finding one percent permanent of the left lower extremity, was not carried out in accordance with those standards.

LEGAL PRECEDENT

The schedule award provision of the FECA[6] and its implementing regulations[7] 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. The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.[8]

In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the foot, the relevant portion of the leg for the present case, reference is made to Table 16-2 (Foot and Ankle Regional Grid) beginning on page 501.[9] After the Class of Diagnosis (CDX) is determined from the Foot and Ankle Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for Functional History (GMFH), grade modifier for Physical Examination (GMPE), and grade modifier for Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[11]

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404 (1999).

[8] *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 2.808.5a (February 2013).

[9] *See* A.M.A., *Guides* (6th ed. 2009) 509-11.

[10] *Id.* at 501-08.

[11] *Id.* at 23-28.

ANALYSIS

OWCP accepted that appellant sustained left plantar fasciitis and, on August 10, 2012, she underwent OWCP-approved left foot endoscopic plantar fasciotomy. On December 4, 2012 she returned to performing her regular duties for eight hours per day without restrictions. On November 28, 2016 appellant filed a claim for a schedule award due to her accepted employment injury. In a March 9, 2017 decision, OWCP denied appellant's schedule award claim noting that she had not established permanent impairment due to her accepted left foot condition. It found that its determination was supported by the impairment rating of Dr. Estaris, an OWCP medical adviser who utilized the examination findings of Dr. Lopez, an attending physician.

The Board finds that appellant failed to meet her burden of proof to establish permanent impairment due to her left foot condition.

The Board finds that Dr. Estaris properly determined that appellant did not have permanent impairment of her left lower extremity under the standards of the sixth edition of the A.M.A., *Guides*. Dr. Estaris indicated that he had reviewed the evidence of record and provided an impairment rating based on the physical examination findings of Dr. Lopez.[12] He found that, under Table 16-2, application of the diagnosis-based impairment rating method meant that appellant's left plantar fibromatosis fell under class 1 (significant palpatory findings on examination) with a default value of one percent permanent impairment.[13] Dr. Estaris correctly calculated values for grade modifiers using Table 16-6 through Table 16-8. He noted that appellant had a functional history grade modifier of 0 because she had no antalgic gait, her left foot condition caused no interference with her daily activities, and she was performing her regular work. Appellant had a physical examination grade modifier of 1 due to findings of mild tenderness over her left hindfoot and she had a clinical studies modifier of 0 because there was no clinical study supporting the diagnosis of plantar fibromatosis.[14] Dr. Estaris found that application of the net adjustment formula meant that there would be movement two spaces to the left of the one percent default value on Table 16-2, which resulted in zero percent permanent impairment of her left lower extremity.[15]

The Board finds that Dr. Estaris, in his February 21, 2017 report, properly explained why Dr. Lopez' October 26, 2016 rating calculation, finding one percent permanent impairment of the left lower extremity, was not carried out in accordance with the standards of the sixth edition of the A.M.A., *Guides* and therefore was of limited probative value. The Board has held that an opinion on permanent impairment is of limited probative value if it is not derived in accordance with the standards adopted by OWCP and approved by the Board as appropriate for evaluating

[12] Dr. Estaris noted that appellant's left foot condition reached MMI on October 26, 2016, the date of Dr. Lopez' evaluation.

[13] *See* A.M.A., *Guides* 501-08, Table 16-2.

[14] *See id.* at 516-20, Table 16-6 through Table 16-8.

[15] *See supra* note 10.

schedule losses.[16] Dr. Estaris explained that his impairment rating differed from that of Dr. Lopez because Dr. Lopez did not calculate the functional history and clinical studies grade modifiers in accordance with the standards of the sixth edition of the A.M.A., *Guides.* He noted that Dr. Lopez found a functional history grade modifier of 1, but indicated that this finding was not appropriate under Table 16-6 because Dr. Lopez clearly reported that appellant had a normal gait pattern with no limp.[17] Dr. Estaris further indicated that Dr. Lopez found a clinical studies modifier of 1, but advised that this was not correct because there was no clinical study in the evidence of record to support the diagnosis of appellant's left foot condition.[18]

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 did not meet her burden of proof to establish permanent impairment of her left foot for schedule award purposes.

[16] *See James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

[17] Dr. Lopez had indicated that appellant had a functional history grade modifier of 1 due to an antalgic gait pattern corrected with footwear modifications. The Board notes, however, that there is no evidence of record supporting that appellant had an antalgic gait pattern that was corrected in such a manner.

[18] The Board notes that the record does not contain any diagnostic testing of appellant's left foot.

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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