

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

C.M., Appellant	)	
	)	
and	)	<b>Docket No. 17-1692</b>
	)	<b>Issued: December 14, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Philadelphia, PA, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On August 3, 2017 appellant, through counsel, filed a timely appeal from a June 5, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish more than one percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity, for which she previously received schedule award compensation.

## FACTUAL HISTORY

On April 25, 2013 appellant, then a 49-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral plantar fibromatosis and a possible left meniscal tear due to factors of her federal employment, including constant standing and walking on concrete surfaces.

By decision dated June 20, 2014, OWCP accepted appellant's claim for the condition of aggravation of bilateral plantar fibromatosis.

On February 24, 2015 appellant filed a claim for a schedule award (Form CA-7).

By development letter dated March 3, 2015, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries in support of her schedule award claim. Appellant did not respond.

By decision dated July 8, 2015, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body.

On July 15, 2015 counsel requested a telephonic hearing.

In a November 11, 2015 report, Dr. William M. Urbas, a podiatric surgeon, opined that appellant had 13 percent permanent impairment of the bilateral lower extremities based on the diagnosis of plantar fibromatosis with objective chronic changes found upon magnetic resonance imaging (MRI) scans of both feet. He determined that she had reached maximum medical improvement (MMI) as of 2011.

By decision dated June 1, 2016, an OWCP hearing representative conducted a review of the written record and vacated the prior decision. It remanded the case for OWCP to refer Dr. Urbas' November 11, 2015 report to a district medical adviser to determine whether the medical evidence of record established permanent impairment of a scheduled member or function of the body causally related to appellant's accepted condition.

On July 4, 2016 Dr. Morley Slutsky, an OWCP medical adviser and Board-certified occupational medicine specialist, reviewed the medical evidence of record and determined that appellant's date of MMI was November 11, 2015, the date of Dr. Urbas' impairment examination. He concurred with Dr. Urbas' diagnosis, but noted that the physician had not assigned class or grade modifiers when calculating his impairment rating. Utilizing Table 16-2, page 501-08, of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent*

*Impairment* (A.M.A., *Guides*),<sup>3</sup> Dr. Slutsky found that appellant's most impairing diagnosis was plantar fasciitis. He placed her into a class 1 diagnosis and assigned a grade modifier of 1 for functional history (GMFE) because she still had symptoms in her foot joint. Dr. Slutsky assigned a grade modifier of 1 for physical examination (GMPE) because there was a palpable mass consistent with plantar fasciitis. He found that a grade modifier for clinical studies (GMCS) was not applicable in this case. Using the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), Dr. Slutsky calculated that appellant had a net adjustment of (1-1) + (1-1) + (n/a) = zero, equaling a default grade C. Based on these calculations, he concluded that appellant had one percent permanent impairment of the right lower extremity and one percent permanent impairment left lower extremity.

By decision dated September 28, 2016, OWCP determined that appellant was entitled to a schedule award for one percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity. It afforded the weight of the medical evidence to DMA Dr. Slutsky's July 4, 2016 report.

By decision dated October 12, 2016, OWCP granted appellant a schedule award for one percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity. The award ran for 5.76 weeks for the period November 11 to December 21, 2015.

On October 13, 2016 appellant, through counsel, requested an oral hearing by a representative of OWCP's Branch of Hearings and Review.

In support of her claim, appellant submitted a copy of Table 16-2, page 501, of the A.M.A., *Guides* entitled *Foot and Ankle Regional Grid -- Lower Extremity Impairments*.

A telephonic hearing was held before an OWCP hearing representative on May 1, 2017. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence. No additional evidence was received.

By decision dated June 5, 2017, OWCP's hearing representative affirmed the October 12, 2016 schedule award decision, finding that the weight of the medical evidence rested with the DMA, Dr. Slutsky.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA and its implementing regulations<sup>4</sup> provide for compensation to employees sustaining impairment from loss or loss of use of specified members 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 sound 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

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>4</sup> 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

to all claimants. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.<sup>5</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.<sup>6</sup>

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).<sup>7</sup> Under the sixth edition, the evaluator identifies the impairment class of diagnosis (CDX) condition, which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.<sup>8</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish more than one percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity, for which she previously schedule award compensation.

In his November 11, 2015 report, Dr. Urbas opined that appellant had 13 percent permanent impairment of the bilateral lower extremities based on his diagnosis of plantar fibromatosis with objective chronic changes found upon MRI scan of both feet. However, the report of Dr. Urbas did not provide detailed citation to the A.M.A., *Guides* and was therefore insufficient to establish permanent impairment warranting a schedule award.

In accordance with its procedures, OWCP properly referred the evidence of record to its medical adviser Dr. Slutsky, who, in a July 4, 2016 report, reviewed the evidence and determined that appellant's date of MMI was November 11, 2015, the date of Dr. Urbas' impairment examination. Utilizing Table 16-2, page 501-08, of the sixth edition of the A.M.A., *Guides*, Dr. Slutsky found that appellant's most impairing diagnosis was plantar fasciitis. He placed her into a class 1 diagnosis and assigned a grade modifier of 1 for functional history because she still had symptoms in her foot joint. Dr. Slutsky calculated that appellant had a net adjustment of  $(1-1) + (1-1) + (n/a) = \text{zero}$ , equaling a default grade C. Based on these calculations, he concluded that appellant had one percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity.

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<sup>5</sup> See *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000). See also 5 U.S.C. § 8107.

<sup>6</sup> See *D.T.*, Docket No. 12-0503 (issued August 21, 2012); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (March 2017); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>7</sup> A.M.A., *Guides* (6<sup>th</sup> ed., 2009), p.3, section 1.3, *International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement*.

<sup>8</sup> *Id.* at 494-531.

<sup>9</sup> See *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

The Board finds that OWCP's medical adviser applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Urbas' clinical findings. The medical adviser's calculations were mathematically accurate. There is no medical evidence of record utilizing the appropriate tables of the sixth edition of the A.M.A., *Guides* demonstrating a greater percentage of permanent impairment. OWCP's medical adviser explained that Dr. Urbas' rating of 13 percent permanent impairment of the bilateral lower extremities was erroneous under the A.M.A., *Guides* because he failed to properly assign a class or grade modifiers in his calculations. The Board has held that when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, or does not discuss how he arrives at the degree of impairment based on physical findings, his or her opinion is of diminished probative value in establishing the degree of impairment and OWCP may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings reported by the attending physician.<sup>10</sup> The Board finds that OWCP's medical adviser in this case properly applied the standards of the A.M.A., *Guides*. Dr. Slutsky's opinion represents the weight of medical evidence and OWCP properly relied on his assessment of one percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity.<sup>11</sup>

In support of her claim, appellant submitted to OWCP a copy of Table 16-2, page 501, of the A.M.A., *Guides* entitled *Foot and Ankle Regional Grid -- Lower Extremity Impairments*. The Board has held that such documents are of general application and not determinative.<sup>12</sup> Therefore, this document has no probative value regarding appellant's permanent impairment under the sixth edition of the A.M.A., *Guides* and is insufficient to establish a claim for an additional schedule award.<sup>13</sup>

There is no probative medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has more than one percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity. Accordingly, appellant has not established that she is entitled to a schedule award greater than that previously received.

Appellant may, at any time, 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.

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<sup>10</sup> See *John L. McClanic*, 48 ECAB 552 (1997); *L.M.*, Docket No. 12-868 (issued September 4, 2012).

<sup>11</sup> See *M.T.*, Docket No. 11-1244 (issued January 3, 2012).

<sup>12</sup> See *J.J.*, Docket No. 10-1758 (issued May 16, 2011); see also *C.B.*, Docket No. 08-2268 (issued May 22, 2009) (where the Board held that newspaper clippings, medical texts, and excerpts from publications are of no evidentiary value).

<sup>13</sup> See *Richard A. Neidert*, 57 ECAB 474 (2006) (an attending physician's report is of little probative value where the A.M.A., *Guides* are not properly followed).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish more than one percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 5, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2018  
Washington, DC

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

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

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