

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

Under OWCP File No. xxxxxx941, appellant, a 69-year-old retired mail processing clerk, has an accepted occupational disease claim (Form CA-2) for contusion of right great toe, hallux valgus, and bunion, which arose on or about May 1, 2008.³ He underwent OWCP-approved right foot surgeries on July 15, 2010 and April 21, 2011. When the case was last on appeal, the Board affirmed OWCP's denial of wage-loss compensation for the period December 20, 2011 through February 14, 2012.

Under OWCP File No. xxxxxx940, appellant has an accepted occupational disease claim for lumbar radiculopathy, which arose on or about May 1, 2008. With respect to his employment-related lumbar condition, appellant received schedule awards totaling 23 percent permanent impairment of the left lower extremity and 23 percent permanent impairment of the right lower extremity.⁴

In May 2016 appellant filed a claim for a schedule award (Form CA-7) with respect to his accepted right foot condition under File No. xxxxxx941.

In a December 28, 2015 report, Dr. Estella F. Martinez (nee Hernandez), a Board-certified family practitioner, diagnosed post-traumatic arthritis of the first metatarsal phalangeal joint and hallux rigidus of the right foot. Dr. Martinez opined that appellant had two percent permanent impairment due to pain-related impairment of the right great toe and zero percent permanent impairment for osteoarthritis of the foot joint. Regarding the metatarsal fracture, Dr. Martinez utilized Table 16-2, page 504, of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁵ She found that appellant had a class 1 diagnosis and assigned a grade modifier of 2 for Functional History (GMFH) due to appellant's antalgic limp and occasional use of a cane, a grade modifier of 2 for Physical Examination (GMPE) due to moderate palpatory findings, and a grade modifier of 1 for Clinical Studies (GMCS) due to normal cartilage interval. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), Dr. Martinez calculated that appellant had a net adjustment of (2-1) + (2-1) + (1-1) = 2, which equated to four percent permanent impairment of the right lower extremity. She concluded that when combining the impairments, appellant had a whole person impairment rating of five percent.

² Docket No. 12-1529 (issued December 11, 2012).

³ Appellant retired effective April 2, 2012.

⁴ The latest award, dated November 6, 2013, was for spinal nerve extremity impairment due to motor and/or sensory deficits affecting the L5 and S1 nerve roots, bilaterally. See *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5c(3) (February 2013).

⁵ A.M.A., *Guides*, 6th ed. 2009.

On June 5, 2016 Dr. Morley Slutsky, a Board-certified occupational medicine specialist and OWCP medical adviser, concurred with Dr. Martinez' rating of four percent permanent impairment of the right lower extremity, but disagreed with the rating of two percent permanent impairment due to pain-related impairment of the right great toe.

OWCP subsequently determined that an improper referral type had been used when the case was referred to Dr. Slutsky because the required referral memorandum regarding appellant's previous schedule awards under File No. xxxxxx940 was missing.

Thereafter, the case record was referred to Dr. Michael M. Katz, a Board-certified orthopedic surgeon and OWCP medical adviser. In his December 23, 2016 report, Dr. Katz noted that OWCP had previously granted schedule awards for appellant's right and left lower extremities and he requested all prior district medical adviser (DMA) reports authorizing the prior schedule awards to determine whether overlapping impairments existed.

On March 16, 2017 Dr. Katz reviewed the medical evidence of record and determined that appellant had reached maximum medical improvement (MMI) as of December 28, 2015, the date of Dr. Martinez' examination. He noted that appellant had previously been awarded schedule awards for a total of 23 percent permanent impairment of the right and left lower extremities under File No. xxxxxx940. Dr. Katz agreed that appellant had four percent permanent impairment of the right lower extremity due to his accepted great toe metatarsal fracture under the sixth edition of the A.M.A., *Guides*. He disagreed with the rating of two percent permanent impairment due to pain-related impairment of the right great toe as it was incorporated with the Table 16-2 impairment rating and did not warrant additional compensation on a separate basis. He then combined the prior rating for lower extremity motor/sensory deficits (23 percent) with the current right metatarsal impairment rating (4 percent), and found a total right lower extremity permanent impairment of 26 percent.⁶

By decision dated May 11, 2017, OWCP granted appellant a schedule award for an additional three percent permanent impairment of the right lower extremity. The award ran for 8.64 weeks for the period December 28, 2015 to February 26, 2016.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.⁷ FECA, however, does not specify the manner by which the percentage loss of a member, function, or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.⁸

⁶ Appendix A, A.M.A., *Guides* 604 (6th ed. 2009).

⁷ 5 U.S.C. § 8107(c). For a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

⁸ 20 C.F.R. § 10.404.

Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁹

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based impairment method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).¹⁰ 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.¹¹ 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.¹²

After obtaining all necessary medical evidence, the case file should be routed to the DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*.¹³ The DMA should provide his or her rationale for the percentage of impairment specified.¹⁴

ANALYSIS

OWCP accepted that appellant sustained a contusion of right great toe, hallux valgus, and bunion due to factors of his federal employment. Under a separate claim, OWCP accepted lumbar radiculopathy. In 2013, it granted appellant schedule awards totaling 23 percent permanent impairment of each lower extremity due to his accepted lumbar condition. Appellant subsequently filed a claim for a schedule award with respect to his accepted right foot condition. It is appellant's burden of proof to submit sufficient evidence to establish the extent of permanent impairment.¹⁵

In her December 28, 2015 report, Dr. Martinez diagnosed post-traumatic arthritis of the first metatarsal phalangeal joint and hallux rigidus of the right foot. Dr. Martinez opined that appellant had two percent permanent impairment due to pain-related impairment of the right great toe and zero percent permanent impairment for osteoarthritis of the foot joint. Regarding the metatarsal fracture, Dr. Martinez utilized Table 16-2, page 504, of the sixth edition of the

⁹ 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).

¹⁰ A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3, International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

¹¹ *Id.* at 494-531.

¹² See *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6f.

¹⁴ *Id.*

¹⁵ See *Annette M. Dent*, 44 ECAB 403 (1993).

A.M.A., *Guides* and found that appellant had a class 1 diagnosis. She assigned a grade modifier of 2 for functional history due to appellant's antalgic limp and occasional use of a cane, a grade modifier of 2 for physical examination due to moderate palpatory findings, and a grade modifier of 1 for clinical studies due to normal cartilage interval. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), Dr. Martinez calculated that appellant had a net adjustment of $(2-1) + (2-1) + (1-1) = 2$, which equated four percent permanent impairment of the right lower extremity. She concluded that when combining the impairments, appellant had a whole person impairment rating of five percent.

In accordance with its procedures, OWCP properly referred the evidence of record to its OWCP medical adviser, Dr. Katz. In his March 16, 2017 report, Dr. Katz reviewed the medical evidence of record and determined that appellant had reached MMI as of December 28, 2015, the date of Dr. Martinez' examination. He concurred that appellant had four percent permanent impairment of the right lower extremity due to his accepted right great toe metatarsal fracture under the sixth edition of the A.M.A., *Guides*. He disagreed, however, with the rating of two percent permanent impairment of the right lower extremity due to pain-related impairment of the right great toe because it was already incorporated with the four percent impairment rating based on Table 16-2 and did not warrant additional compensation on a separate basis. He then combined the prior rating for lower extremity motor/sensory deficits (23 percent) with the current right metatarsal impairment rating (4 percent), and found a total of 26 percent right lower extremity permanent impairment.

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. Martinez's clinical findings. OWCP's medical adviser's calculations were mathematically correct. The Board notes that Dr. Martinez's assessment of five percent whole person impairment is not allowed for purposes of making schedule award decisions under FECA. There is no statutory basis for the payment of a schedule award for whole body impairment under FECA.¹⁶ Payment is authorized only for the permanent impairment of specified members, organs, or functions of the body.¹⁷ For these reasons, the Board finds that OWCP properly relied on an OWCP medical adviser's assessment of an additional three percent permanent impairment of the right lower extremity, in granting an additional schedule award.

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 the additional three percent permanent impairment of the right lower extremity. Accordingly, appellant has not established that he is entitled to a schedule award greater than those previously awarded.

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.

¹⁶ See *N.H.*, Docket No. 17-0696 (issued July 19, 2017).

¹⁷ *Tania R. Keka*, 55 ECAB 354 (2004).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained more than an additional three percent permanent impairment of the right lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2018
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