



## **FACTUAL HISTORY**

This case has previously been before Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On June 24, 1997 appellant, then a 39-year-old casual clerk, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she sustained an injury to her right leg when a colleague rolled a bulk mail carrier into her leg. OWCP accepted her claim for a right leg contusion/laceration, tear of the Achilles tendon, tendinitis, and right leg cellulitis. Appellant began receiving wage-loss compensation on the supplemental rolls, effective March 2, 2002, and on the periodic rolls, effective February 23, 2003.

On October 6, 2009 OWCP terminated appellant's wage-loss compensation and medical benefits as it determined that she no longer had any functional residuals from her employment injury. This termination decision was affirmed by a hearing representative on May 6, 2010 and by the Board on May 23, 2011.<sup>4</sup> On January 13, 2012 OWCP denied modification of the termination decision, and on October 26, 2012 the Board affirmed the January 12, 2012 decision.<sup>5</sup>

On November 20, 2012 Dr. Jessica Glazer Volsky, an osteopath, conducted a physical examination, recorded her findings, and diagnosed right Achilles tendinitis. She found that appellant had 31 percent permanent impairment of her right lower extremity pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>6</sup> Dr. Volsky explained that, based on Table 16-2 of the A.M.A., *Guides*, appellant had a class 3 severe problem. She assigned grade modifiers of 2 for functional history and 3 for physical examination, which she determined resulted in a net adjustment of negative 1. Dr. Volsky concluded that appellant had 31 percent permanent impairment of her right lower extremity.

On January 11, 2013 appellant filed a claim for a schedule award (Form CA-7).

In a report dated January 31, 2013, OWCP's medical adviser agreed with the 31 percent permanent impairment rating of Dr. Volsky.

By decision dated April 19, 2013, OWCP denied appellant's claim for a schedule award, based upon a finding that OWCP had terminated her compensation benefits on October 6, 2009 as she had no residuals from her employment injury.

---

<sup>3</sup> Docket No. 16-0243 (issued May 9, 2016); Docket No. 12-0724 (issued October 26, 2012); Docket No. 10-1572 (issued May 23, 2011).

<sup>4</sup> Docket No. 10-1572, *id.*

<sup>5</sup> Docket No. 12-0724, *supra* note 3.

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

On April 23, 2013 appellant requested a hearing before an OWCP hearing representative. By decision dated August 5, 2013, the hearing representative determined that further development of the medical evidence was necessary. He noted that termination of compensation based upon a finding that appellant no longer had residuals of the accepted condition did not bar a subsequent schedule award claim.

On August 9, 2013 OWCP referred appellant to Dr. Manhal Ghanma, a Board-certified orthopedic surgeon, for a second opinion examination. In an August 30, 2013 report, Dr. Ghana noted her ratable diagnosis as healed right Achilles tendon. He concluded that appellant had no residuals from her accepted employment injury. Dr. Ghanma noted that, pursuant to Table 16-2 of the A.M.A., *Guides*, she fell into class 0 as she had no significant objective abnormal findings of muscle or tendon injury. He noted that there was no current evidence of cellulitis and no evidence of any Achilles tendon tear or tendinitis. Dr. Ghanma concluded that appellant had reached maximum medical improvement.

By decision dated September 19, 2013, OWCP denied appellant's claim for a schedule award as it determined that the medical evidence of record failed to demonstrate measurable permanent impairment of the right lower extremity due to the June 24, 1997 employment injury.

On September 23, 2013 appellant requested a hearing before an OWCP hearing representative. By decision dated May 2, 2014, the hearing representative affirmed the denial of the schedule award claim.

On November 25, 2014 appellant, through counsel, requested reconsideration of the May 2, 2014 decision. In support of her claim, appellant submitted an August 8, 2014 report, wherein Dr. Catherine Watkins Campbell, a physician Board-certified in family and preventive medicine, reviewed the medical record and conducted a physical examination. Dr. Watkins Campbell determined that pursuant to Table 16-2 of the sixth edition of the A.M.A., *Guides*, a diagnosis of right Achilles tendinitis with minimal palpatory findings would be class 1. She noted that, considering the multiple diagnoses associated with the reported disability, a functional history modifier of 2 (moderate) rather than 3 (severe) was chosen. Since the two-centimeter atrophy on the right was felt to be more likely related to the right knee and lumbar radiculopathy conditions and because the other right Achilles tendon findings were minimal, a physical examination modifier of 1 was chosen. Dr. Watkins Campbell noted that there were no applicable clinical studies. Applying the formula set forth in the A.M.A., *Guides*, a functional history modifier of 1 (2-1) and a physical examination modifier of 0 (1-1) equaled a total modifier of 1, which moved the default class C to the right for a class D, which she determined equaled two percent permanent impairment of the right lower extremity.

On October 9, 2015 an OWCP medical adviser reviewed the medical evidence of record and determined that appellant's final right lower extremity permanent impairment rating was zero percent. He noted a lack of consistent objective findings.

By decision dated November 3, 2015, OWCP denied modification of the May 2, 2014 decision. On November 24, 2015 appellant, through counsel, appealed to the Board.

By decision dated May 9, 2016, the Board found that a conflict in the medical evidence had been created between the opinions of Dr. Ghanma and Drs. Volsky and Watkins Campbell. Accordingly, the Board remanded the case for referral to an impartial medical specialist for resolution of the conflict.<sup>7</sup> The Board also noted that termination of a claim for benefits due to a finding of no residuals of the accepted condition does not bar a subsequent schedule award, but instead the claims examiner should consider the schedule award separately from the termination of benefits.<sup>8</sup>

By letter dated June 20, 2016, OWCP referred appellant to Dr. Kenneth Chapman, a physician Board-certified in pain management and anesthesiology, for an impartial medical examination. In a July 18, 2016 report, Dr. Chapman listed appellant's diagnoses as right Achilles tendon tear, tendinitis, and cellulitis in her right leg. He noted that Achilles tendinitis was the primary impairing diagnosis. Dr. Chapman opined that appellant had no significant residuals from the June 24, 1997 employment injury. He evaluated her impairment pursuant to Table 16-2 of the A.M.A., *Guides*. With regard to appellant's right ankle, Dr. Chapman determined that her diagnosis-based class was 0, and that all of the grade modifiers were 0.

By memorandum dated August 4, 2016, OWCP referred appellant's case to OWCP's medical adviser for review. In an August 9, 2016 response, the medical adviser listed her accepted condition as right Achilles tendinitis. He determined that the referee physician, Dr. Chapman, correctly applied the A.M.A., *Guides* in determining the extent of appellant's permanent impairment.

By decision dated August 17, 2016, OWCP denied appellant's claim for a schedule award based on the opinion of the impartial medical examiner, Dr. Chapman.

On August 29, 2016 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative. At the hearing, held on April 7, 2017, the hearing representative agreed to hold the record open for 30 days for appellant to submit additional evidence. No additional evidence was received.

By decision dated June 6, 2017, the hearing representative affirmed the August 17, 2016 decision of OWCP. She determined that OWCP correctly denied schedule award compensation based on the referee opinion of Dr. Chapman, who found that appellant had no permanent impairment of her right lower extremity under the A.M.A., *Guides*.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>9</sup> and its implementing regulations<sup>10</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment for

---

<sup>7</sup> Docket No. 16-0243, *supra* note 3.

<sup>8</sup> *Id.*; see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

<sup>9</sup> 5 U.S.C. § 8107.

<sup>10</sup> 20 C.F.R. § 10.404.

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 insure equal justice under the law to all claimants, good administrative practice necessitates the use of 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.<sup>11</sup> The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.<sup>12</sup>

The sixth edition requires identifying the impairment class for the diagnosed condition Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS).<sup>13</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>14</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the 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.<sup>15</sup>

Section 8123(a) provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>16</sup> The implementing regulations provide that, if a conflict exists between the medical opinion of the employee's treating physicians and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>17</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>18</sup>

---

<sup>11</sup> *Id.*

<sup>12</sup> See *supra* note 8 at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *supra* note 8 at Chapter 2.808.5a (February 2013).

<sup>13</sup> A.M.A., *Guides* 494-531.

<sup>14</sup> *Id.* at 521.

<sup>15</sup> See *supra* note 8.

<sup>16</sup> *R.C.*, Docket No. 12-0437 (issued October 23, 2012).

<sup>17</sup> 20 C.F.R. 10.321.

<sup>18</sup> *F.C.*, Docket No. 14-0560 (issued November 12, 2015).

## ANALYSIS

OWCP accepted appellant's claim for right leg contusion/laceration, tear of the Achilles tendon, tendinitis, and right leg cellulitis, and paid her wage-loss compensation on the periodic rolls. On October 6, 2009 it terminated her wage-loss compensation and medical benefits as it determined that she no longer had any residuals from her employment injury.

On January 11, 2013 appellant filed a claim for a schedule award, and on April 19, 2013 OWCP denied her claim. She appealed to the Board and, by decision dated May 9, 2016, the Board set aside the April 19, 2013 decision, finding that further development of the medical evidence was necessary. The Board determined that there was an unresolved conflict between the opinions of appellant's treating physicians, Drs. Volsky and Watkins Campbell, and the second opinion physician, Dr. Ghanma, with regard to whether appellant had permanent impairment of her lower extremity, warranting a schedule award. The Board explained that appellant should be referred for an impartial medical examination.<sup>19</sup>

On remand, OWCP referred appellant to Dr. Chapman for an impartial medical examination. Dr. Chapman noted no significant residuals from the June 24, 1997 employment injury. He evaluated appellant pursuant to Table 16-2 of the A.M.A., *Guides*, and determined that her diagnosis based class was 0, and that all the grade modifiers were 0. Accordingly, Dr. Chapman opined that she had no permanent impairment due to her employment-related injury.

Since OWCP referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.<sup>20</sup>

The Board finds that the opinion of Dr. Chapman is well-rationalized and that he properly applied the A.M.A., *Guides*. OWCP's medical adviser agreed with Dr. Chapman's conclusion that appellant did not have permanent impairment of her lower extremity pursuant to Table 16-2 of the A.M.A., *Guides*. Therefore, the Board finds that the evidence of record does not establish that permanent impairment of a scheduled member, warranting a schedule award.

Appellant may request a schedule award or an 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 has not met her burden of proof to establish permanent impairment of her right lower extremity, warranting a schedule award.

---

<sup>19</sup> Docket No. 16-0243, *supra* note at 3.

<sup>20</sup> *C.H.*, Docket No. 16-1647 (issued September 12, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 6, 2017 is affirmed.

Issued: January 23, 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