United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
	)	
and	)	**Docket No. 18-1061**
	)	**Issued: November 9, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Clermont, FL, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 1, 2018 appellant filed a timely appeal from a February 15, 2018 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 has met her burden of proof to establish permanent impairment of her left lower extremity due to her October 10, 2014 employment injury.

FACTUAL HISTORY

OWCP accepted that on October 10, 2014 appellant, then a 44-year-old rural carrier, sustained a right foot sprain due to twisting her right ankle/foot while delivering mail on that date.

[1] 5 U.S.C. § 8101 *et seq.*

Appellant stopped work on October 10, 2014 and returned to limited-duty work on December 13, 2014.[2] She returned to her regular-duty job on January 2, 2015.

In a January 30, 2015 report, Dr. Paul Dowdy, an attending Board-certified orthopedic surgeon, indicated that appellant reported that her right foot/ankle pain had improved and that her right ankle did not give way. Appellant also reported that she had been performing her regular duty. Dr. Dowdy detailed the findings of his January 30, 2015 physical examination of appellant's right ankle/foot, noting that there was no swelling of appellant's right ankle/foot and normal alignment of the hindfoot. Appellant had no deformity of the ankle/foot and she was nontender laterally and medially. Dr. Dowdy reported that range of motion of the right ankle was plantar flexion to 60 degrees and dorsiflexion to 10 degrees with normal subtalar motion. There was no tenderness over the peroneal tendons and no evidence of subluxation of these tendons. Dr. Dowdy diagnosed right ankle sprain and indicated that appellant could perform full-duty work.

In a January 26, 2017 report, Dr. Samy F. Bishai, an attending Board-certified orthopedic surgeon, noted that appellant presented complaining of right ankle/foot pain and swelling. He advised that his physical examination revealed that appellant had swelling in her right ankle and foot located on the medial, lateral, and anterior sides. Appellant had right ankle range of motion of dorsiflexion to 10 degrees, plantar flexion to 20 degrees, inversion to 20 degrees, and eversion to 5 degrees. Dr. Bishai advised that appellant walked with an antalgic gait and she limped on the right side. He diagnosed severe sprain of the right ankle/foot, and ruled out torn ligaments of the right ankle/foot. Dr. Bishai noted that he was evaluating appellant's right lower extremity permanent impairment using the range of motion (ROM) rating method found in Table 22 on page 549 of the sixth edition of the A.M.A., *Guides*.[3] He found that appellant's dorsiflexion of 10 degrees equaled 7 percent right lower extremity impairment and that her plantar flexion of 20 degrees also equaled 7 percent right lower extremity impairment. Dr. Bishai combined these values to conclude that appellant had a total permanent impairment rating for her right lower extremity of 14 percent.[4]

On March 13, 2017 appellant filed a schedule award claim (Form CA-7) due to her accepted October 10, 2014 employment injury.

In a March 17, 2017 development letter, OWCP requested that appellant submit additional evidence in support of her schedule award claim, including a report in which an attending physician evaluated her permanent impairment under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[5]

[2] Appellant received continuation of pay for 45 days and OWCP paid her partial disability compensation on the daily rolls for the period November 24 to December 12, 2014.

[3] Dr. Bishai indicated that he was using the ROM rating method to rate appellant's permanent impairment because the diagnosis-based impairment (DBI) rating method would not compensate appellant for range of motion deficits in her right ankle/foot, a problem which affected all activities of her daily living and work.

[4] Dr. Bishai found that appellant reached maximum medical improvement (MMI) on January 26, 2017, the date of his examination.

[5] A.M.A., *Guides* (6th ed. 2009).

Appellant submitted an April 6, 2017 report in which Dr. Bishai noted that his physical examination on that date showed swelling in the right ankle and foot located on the medial, lateral, and anterior sides. Appellant had right ankle range of motion of dorsiflexion to 10 degrees, plantar flexion to 20 degrees, inversion to 20 degrees, and eversion to 5 degrees. Dr. Bishai advised that appellant walked with an antalgic gait and she limped on the right side. He diagnosed severe sprain of the right ankle/foot, and ruled out torn ligaments of the right ankle/foot. Dr. Bishai again noted that he was evaluating appellant's right lower extremity permanent impairment using the ROM rating method found in Table 22.[6] He found that appellant's dorsiflexion of 10 degrees equaled 7 percent right lower extremity impairment and that her plantar flexion of 20 degrees also equaled 7 percent right lower extremity impairment. Therefore, appellant had a total permanent impairment rating for her right lower extremity of 14 percent.[7]

On April 18, 2017 OWCP referred appellant's case to Dr. Michael M. Katz, a Board-certified orthopedic surgeon, to serve in his capacity as an OWCP medical adviser. It requested that Dr. Katz review Dr. Bishai's April 4, 2017 report and provide his own calculation of appellant's right lower extremity permanent impairment under the sixth edition of the A.M.A., *Guides.*

In an April 21, 2017 report, Dr. Katz indicated that he had reviewed Dr. Bishai's April 4, 2017 report. He determined that there was a conflict in medical opinion/information between the findings of Dr. Bishai and Dr. Dowdy which could not be resolved on the basis of a medical record review.[8] Therefore, Dr. Katz recommended that appellant be referred for a second opinion examination by an orthopedic surgeon or physical medicine and rehabilitation physician who is familiar with the sixth edition of the A.M.A., *Guides.*

On September 15, 2017 OWCP referred appellant for a second opinion examination to Dr. Richard C. Smith, a Board-certified orthopedic surgeon. It requested that Dr. Smith provide an opinion on appellant's right lower extremity permanent impairment using the sixth edition of the A.M.A., *Guides.*

In an October 12, 2017 report, Dr. Smith discussed appellant's factual and medical history and noted that she presented with complaints of right ankle/foot pain. He reported the findings of the physical examination he conducted on that date, noting that appellant had no swelling, warmth, erythema, induration, or deformity in her right ankle/foot. Appellant had normal alignment of her right ankle/foot and there was no instability. Dr. Smith found that appellant had normal range of motion of the right ankle upon dorsiflexion, plantar flexion, inversion, and eversion. He did not find tenderness to palpation in any muscle group of the right ankle/foot and he did not record motor strength less than 5/5 in any of these muscle groups. In the permanent impairment rating portion of his report, Dr. Smith advised that appellant did not have objective findings to support the pain

[6] With respect to his use of the ROM rating method, Dr. Bishai indicated that the A.M.A., *Guides* provides that, if more than one method is available for rating a particular condition under the A.M.A., *Guides*, the method producing the higher rating must be used.

[7] Dr. Bishai again found that appellant reached MMI on January 26, 2017, the date of his earlier examination.

[8] Dr. Katz noted that, on January 30, 2015, Dr. Dowdy recorded that appellant had 60 degrees of right ankle dorsiflexion, but that Dr. Bishai later recorded that appellant had only 20 degrees of right ankle dorsiflexion.

complaints in her right ankle/foot. He found that, given these findings, applying the DBI rating method under Table 16-2 meant that appellant's right ankle/foot sprain fell under class 0 and equaled zero percent permanent impairment of her right lower extremity. Dr. Smith determined that appellant had reached MMI as of October 12, 2017, the date of his examination.

OWCP referred Dr. Smith's October 12, 2017 report to Dr. Katz for review and evaluation in his capacity as an OWCP medical adviser. In a January 24, 2018 report, Dr. Katz indicated that he agreed with Dr. Smith's opinion that appellant had no right lower extremity permanent impairment under the DBI rating method found in Table 16-2 of the sixth edition of the A.M.A., *Guides.* He also considered whether appellant had a right lower extremity permanent impairment under the ROM rating method. However, Dr. Katz found that the ROM rating method was not available as an alternative to the DBI rating method because the key diagnostic factor in this case, *i.e.*, appellant's right ankle sprain, was not eligible for ROM rating method under Table 16-2. He found that appellant had reached MMI on October 12, 2017, the date of Dr. Smith's examination.

By decision dated February 15, 2018, OWCP found that appellant had not met her burden of proof to establish permanent impairment of her right lower extremity due to her October 10, 2014 employment injury. It found that the opinions of Dr. Smith and Dr. Katz showed that she had no such permanent impairment.

LEGAL PRECEDENT

The schedule award provisions of FECA,[9] and its implementing federal regulations,[10] 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[11] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[12]

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/ankle, 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.[13] After the class of diagnosis (CDX) is determined from the Knee 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

[9] 5 U.S.C. § 8107.

[10] 20 C.F.R. § 10.404.

[11] *Id.*

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[13] *See* A.M.A., *Guides* 501-08 (6th ed. 2009).

studies (GMCS). The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[14]

OWCP procedures provide that an OWCP medical adviser's primary medical functions are evaluating medical evidence and interpreting physician reports. An OWCP claims examiner seeks evaluation from OWCP's medical adviser in order to proceed with developing and weighing the medical evidence.[15]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish permanent impairment of her right lower extremity due to her October 10, 2014 employment injury.

OWCP accepted appellant's claim for a right ankle sprain sustained at work on October 10, 2014. In March 2017 appellant filed a claim for compensation seeking a schedule award due to her accepted October 10, 2014 employment injury. OWCP denied her claim on February 15, 2018 based on the opinions of Dr. Smith, OWCP's referral physician, and Dr. Katz, OWCP's medical adviser.

The Board finds that the reports of Dr. Smith and Dr. Katz show that appellant has no permanent impairment of her right lower extremity and appellant has not submitted probative medical evidence establishing that she has permanent impairment of that extremity.

In his October 12, 2017 report, Dr. Smith properly found that appellant had no right lower extremity permanent impairment under the relevant standards.[16] He advised that appellant did not have objective findings to support the pain complaints in her right ankle/foot.[17] Dr. Smith found that, given these findings, applying the DBI rating method under Table 16-2 meant that appellant's right ankle/foot sprain fell under class 0 and equaled zero percent permanent impairment of her right lower extremity.[18]

Dr. Katz supported Dr. Smith's permanent impairment determination in his January 24, 2018 report. He also properly found appellant had no right lower extremity permanent impairment under the DBI rating method found in Table 16-2 of the sixth edition of the A.M.A., *Guides.*

[14] *Id.* at 515-22.

[15] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.8(b), (c) (September 2010).

[16] The Board notes that it was proper for Dr. Katz, in his role as OWCP medical adviser, to recommended referral of appellant to a second opinion examiner given the contrasting findings in the case record regarding appellant's right ankle/foot condition. *See supra* note 15 regarding the role of the medical adviser.

[17] Dr. Smith reported that, upon examination, appellant had no swelling, warmth, erythema, induration, or deformity in her right ankle/foot. The results for range of motion testing of appellant's right ankle were normal, motor strength was 5/5 throughout her right ankle/foot, and there was no tenderness to palpation.

[18] *See* A.M.A., *Guides* 501-07, Table 16-2. Dr. Smith determined that appellant had reached MMI as of October 12, 2017, the date of his examination.

Dr. Katz considered whether appellant had a right lower extremity permanent impairment under the ROM rating method. He correctly opined that the ROM rating method was not available as an alternative to the DBI rating method because the key diagnostic factor in this case, *i.e.*, appellant's right ankle sprain, was not eligible for ROM rating method under Table 16-2.[19]

On appeal appellant argues that Dr. Bishai's January 26 and April 6, 2017 evaluations, which applied the ROM method of rating permanent impairment, establish that she has 14 percent permanent impairment of her right lower extremity. However, as noted above, Dr. Katz explained that use of the ROM rating method would be improper in appellant's case because, under the A.M.A., *Guides*, the ROM rating method was not available as an alternative to the DBI rating method for appellant's ankle/foot diagnosis. Therefore, Dr. Bishai's opinion on permanent impairment is 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 schedule losses.[20]

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 has not met her burden of proof to establish permanent impairment of her right lower extremity due to her October 10, 2014 employment injury.

[19] *Id*. Dr. Katz found that appellant reached MMI on October 12, 2017, the date of Dr. Smith's examination.

[20] *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).

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 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