

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

L.N., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

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**Docket No. 18-0156
Issued: August 21, 2019**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 27, 2017 appellant, through counsel, filed a timely appeal from an August 23, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a permanent impairment of a scheduled member entitling her to a schedule award.

FACTUAL HISTORY

On July 24, 2009 appellant, then a 44-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 23, 2009 she twisted her ankle delivering mail while in the performance of duty. By decision dated August 28, 2009, OWCP accepted the claim for left ankle sprain. Appellant stopped work on July 24, 2009 and OWCP paid her wage-loss compensation on the supplemental rolls for the periods July 24 to October 23, 2009, October 26 to November 20, 2009, November 23 to December 4, 2009, and December 7 to 18, 2009. OWCP paid her wage-loss compensation benefits on the periodic rolls for the period December 20, 2009 to May 7, 2011.

By decision dated September 30, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits effective that same date, finding that her work-related medical conditions and disability had resolved. It found that the special weight of the medical evidence rested with a second opinion physician, Dr. Richard A. Rogachefsky, a Board-certified orthopedic hand surgeon, who found that appellant no longer had residuals or disability causally related to her accepted work-related medical conditions.³

On October 14, 2015 appellant requested a telephonic oral hearing before an OWCP hearing representative which was held on June 14, 2016.

By decision dated August 26, 2016, an OWCP hearing representative affirmed the September 30, 2015 decision.

On September 1, 2016 appellant filed a claim for a schedule award (Form CA-7).

In a development letter dated September 13, 2016, OWCP requested that appellant submit an impairment evaluation from her attending physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴

On September 27, 2016 counsel requested authorization for appellant to be examined for purposes of obtaining a rating of her permanent functional impairment.

In a letter dated October 3, 2016, OWCP informed appellant that her medical and wage-loss compensation benefits had been terminated on September 30, 2015 because she did not have residuals of the work injury. It noted that the decision had been affirmed on August 26, 2016.

³ In reports dated June 8 and July 22, 2015, Dr. Rogachefsky reported that appellant's left ankle sprain had resolved with no objective findings of disability. He further reported that an electromyogram (EMG) performed on June 30, 2015 revealed no electrodiagnostic evidence of acute or chronic lumbar or S1 nerve root involvement.

⁴ A.M.A., *Guides* (6th ed. 2009).

OWCP advised her that it would not reopen her claim to allow for a one-time visit with appellant's provider in pursuit of a schedule award. It indicated that appellant had the burden of proof to establish that the condition for which a schedule award was sought was causally related to her employment.

On November 4, 2016 counsel again requested authorization for appellant to be examined for purposes of obtaining a rating of permanent functional impairment. He noted that terminating wage-loss compensation and medical benefits had not terminated entitlement to a schedule award.

By decision dated December 15, 2016, OWCP denied appellant's claim for a schedule award as the evidence of record was insufficient to establish permanent impairment to a member or function of the body.

On December 20, 2016 counsel requested a telephonic hearing before an OWCP hearing representative. The hearing was held on June 13, 2017.

In letters dated December 23, 2016 and January 28, 2017, counsel yet again requested authorization for appellant to be examined for the purpose of obtaining a rating of her permanent functional impairment.

Appellant subsequently submitted an April 5, 2017 impairment rating from Dr. Mesfin Seyoum, a pediatric specialist, who reviewed appellant's medical history and provided findings on physical examination. Dr. Seyoum noted findings of abnormal gait, some limping due to her left ankle condition which required the use of a cane to help with ambulation and balance, tenderness of the dorsolateral aspect of the left ankle, mild limitation of left ankle range of motion due to pain, intact sensory examination and reflexes, and motor weakness of 4/5 in the left hamstring and quadriceps. He diagnosed left ankle sprain as the accepted condition. Dr. Seyoum opined that based on the information available it appeared that her left ankle condition was caused by the accepted employment injury of July 23, 2009 which occurred while she was working as a mail carrier. He opined that she had reached maximum medical improvement (MMI) on September 17, 2011. Dr. Seyoum noted that appellant responded to the activities of daily living questionnaire reporting difficulty with daily living activities such as functional mobility and sleep and rest.

With regard to the pain disability questionnaire in the A.M.A., *Guides* appellant scored 92, corresponding to "moderate pain-related impairment." The lower limb questionnaire noted moderate-to-severe impairment citing Table 16-2, foot and ankle regional grid, of the A.M.A., *Guides*, Dr. Seyoum calculated five percent permanent impairment of the left lower extremity for left ankle sprain with mild motion deficits.⁵ He determined that this diagnosis resulted in a class 1 impairment with a default value of grade C. Dr. Seyoum assigned a grade modifier of 2 for functional history (GMFH),⁶ a grade modifier of 2 for physical examination (GMPE),⁷ and a grade

⁵ A.M.A., *Guides* 501 (6th ed. 2009).

⁶ *Id.* at 516, Table 16-6.

⁷ *Id.* at 517, Table 16-7.

modifier of 1 for clinical studies (GMCS) due to a CT scan evincing mild pathology in the left ankle.⁸ Applying the net adjustment formula, he subtracted 1, the numerical value of the class, from the numerical value of the grade modifiers and then combined those values, resulting in a net adjustment of 2 ((2-1) + (2-1) + (1-1)).⁹ This resulted in a class 1 adjustment +2, warranting movement two places to the right for grade E, resulting in a final permanent impairment rating of seven percent of the left lower extremity.

By decision dated August 23, 2017, an OWCP hearing representative affirmed the December 15, 2016 decision denying appellant's schedule award claim. She noted that Dr. Seyoum had not provided medical rationale explaining how appellant's current examination findings or impairment were related to the accepted July 23, 2009 employment injury. The hearing representative further explained that there was no basis for a schedule award as Dr. Rogachefsky, the second opinion medical examiner, found that the accepted conditions had resolved and there were no additional employment-related conditions.

LEGAL PRECEDENT

The schedule award provision of FECA and its implementing regulations 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.¹⁰ 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. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.¹¹

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).¹² The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.¹³

The A.M.A., *Guides* provide a diagnosis-based impairment (DBI) method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability, and Health (ICF). For lower extremity impairments, the evaluator identifies the impairment class

⁸ *Id.* at 519, Table 16-8.

⁹ *Id.* at 521.

¹⁰ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

¹¹ *Id.* at § 10.404. *See also* Ronald R. Kraynak, 53 ECAB 130 (2001).

¹² *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

¹³ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

of diagnosis (CDX) condition, which is then adjusted by GMFH, GMPE, and GMCS.¹⁴ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁵ Evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.¹⁶

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.¹⁷ For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.¹⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a permanent impairment of a scheduled member entitling her to a schedule award.

Appellant filed a claim for a schedule award and submitted an April 5, 2017 impairment rating from Dr. Seyoum in support of her claim. Dr. Seyoum's report is the only evidence of record that she has submitted providing an opinion as to her permanent functional impairment. He calculated appellant's permanent impairment rating for the condition of left ankle sprain, the accepted condition, and he opined that she had reached MMI on September 17, 2011. Dr. Seyoum discussed his impairment calculations. Citing Table 16-2, Foot and Ankle Regional Grid, of the A.M.A., *Guides*, he calculated seven percent permanent impairment of the left lower extremity for left ankle sprain with mild motion deficits.

The Board has previously explained that the medical evidence of record must establish that the accepted employment injury contributed to the permanent impairment for which schedule award compensation is alleged.¹⁹ Although Dr. Seyoum noted that "it appeared that" appellant's left ankle sprain was related to the July 23, 2009 work injury, he provided no medical explanation or rationale as to how appellant's current examination findings or impairment were causally related to the resolved July 23, 2009 work injury.²⁰ As such, his report is insufficient to establish appellant's claim.

¹⁴ A.M.A., *Guides* (6th ed. 2009) at 493-531.

¹⁵ *Id.* at 521.

¹⁶ *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹⁷ *K.B.*, Docket No. 19-0431 (issued July 1, 2019); *Veronica Williams*, 56 ECAB 367 (2005).

¹⁸ *F.E.*, Docket No. 17-0584 (issued December 18, 2017).

¹⁹ *See M.C.*, Docket No. 17-1089 (issued November 13, 2017).

²⁰ *See V.S.*, Docket No. 16-0464 (issued June 1, 2016).

Further, Dr. Seyoum noted reviewing medical records up to 2011, but he did not mention the second opinion physician evaluation of Dr. Rogachefsky or the results of the EMG testing completed in 2015. The need for detailed medical rationale is particularly important in a situation such as this where OWCP found that all residuals of the accepted conditions had ceased.²¹ As Dr. Seyoum offered no medical explanation that appellant's employment injury contributed to the permanent impairment for which schedule award compensation is sought, his report is of limited probative value.²² Dr. Seyoum's opinion fails to provide a rationalized opinion explaining how the current left ankle functional impairment is related to the July 23, 2009 employment injury. Therefore, the Board finds that the opinion of Dr. Seyoum is insufficient for appellant to meet her burden of proof to establish that her left ankle permanent impairment is causally related to her accepted July 23, 2009 employment injury.

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.²³

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a permanent impairment of a scheduled member entitling her to a schedule award.

²¹ See *W.J.*, Docket No. 11-0495 (issued October 7, 2011) (where the Board found that after OWCP terminated appellant's compensation benefits appellant filed a claim for a schedule award and submitted an impairment rating. The Board affirmed OWCP's decision denying the schedule award because the physician failed to sufficiently explain how the claimed impairment arose from the accepted work injury which resolved).

²² See *M.C.*, Docket No. 17-1089 (issued November 13, 2017).

²³ See *W.H.*, Docket No. 19-0102 (issued June 21, 2019); *Linda T. Brown*, 51 ECAB 115 (1999).

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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