



## ISSUE

The issue is whether appellant has met his burden of proof to establish more than nine percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

## FACTUAL HISTORY

On February 15, 2000 appellant, then a 45-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that day he broke a bone in his left foot when a coworker ran an over the road (OTR) container over his foot. On April 12, 2001 OWCP accepted appellant's claim for left foot strain.<sup>3</sup>

On August 15, 2017 appellant filed a claim for a schedule award (Form CA-7).

By development letter dated September 14, 2017, OWCP requested that appellant submit an impairment evaluation from his attending physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>4</sup> It afforded him 30 days to submit the necessary evidence.

In an August 7, 2017 medical note, Dr. James M. Falko, Board-certified in internal medicine, reported that appellant's February 15, 2000 left foot injury had reached maximum medical improvement (MMI).

In support of his claim, appellant submitted a November 30, 2017 impairment rating from Dr. Jack L. Rook, Board-certified in physical medicine and rehabilitation. Dr. Rook discussed appellant's medical history, reviewed diagnostic testing, and provided findings on physical examination. He explained that on February 15, 2000 appellant's left foot was injured when it was run over by an OTR container that was filled with mail weighing over 2,000 pounds. Dr. Rook noted review of a February 15, 2000 x-ray that revealed suspicion for an avulsion-type fracture of the cuboid bone of the left foot which correlated clinically with examination findings. He noted that, while the claim had been accepted for left foot sprain, the medical records indicated that at the time of the left foot injury, appellant sustained a fracture of his left cuboid bone. As such, Dr. Rook prepared impairment ratings for both noted diagnoses. Using Table 16-2, Foot and Ankle Regional Grid, of the sixth edition of the A.M.A., *Guides*,<sup>5</sup> he calculated two percent permanent impairment of the left lower extremity based on the diagnosis of left foot sprain. Dr. Rook calculated seven percent permanent impairment of the left lower extremity based on the diagnosis of class 1 cuboid fracture with mild motion deficits.<sup>6</sup> He assigned a grade modifier of 1

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<sup>3</sup> The record reflects that appellant stopped working for the employing establishment effective August 3, 2000. By decision dated January 11, 2013, OWCP denied appellant's claim for compensation for the period December 19, 1999 to July 6, 2000.

<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>5</sup> *Id.* at 501, Table 16-2.

<sup>6</sup> *Id.* at 503.

for physical examination (GMPE),<sup>7</sup> a grade modifier of 1 for functional history (GMFH),<sup>8</sup> and no grade modifier for clinical studies (GMCS) because the diagnostic study had been used to assign the class. Dr. Rook reported that, following assignment of grade modifiers, application of the net adjustment formula resulted in no net change, amounting to seven percent permanent impairment of the left lower extremity. He then calculated two percent lower extremity permanent impairment rating “utilizing the accepted diagnosis of left foot sprain,” and seven percent permanent impairment rating “for the diagnosis of left cuboid fracture with residuals.” Dr. Rook reported that while either of these impairment ratings could be used, the greater seven percent permanent impairment seemed more appropriate based on review of the medical records and physical examination findings.

On February 1, 2018 OWCP routed Dr. Rook’s report, a statement of accepted facts (SOAF), and the case file to Dr. Jovito Estaris, Board-certified in occupational medicine serving as an OWCP district medical adviser (DMA), for review and determination regarding whether appellant sustained permanent impairment of the left foot and date of MMI in accordance with the sixth edition of the A.M.A., *Guides*.

In a February 7, 2018 report, Dr. Estaris reviewed the case file and Dr. Rook’s November 30, 2017 report, finding that appellant had reached MMI on the date of his examination. He agreed with Dr. Rook’s diagnosis of left foot cuboid fracture resulting in a class 1 diagnosis for mild motion deficit. Dr. Estaris also assigned a GMPE of 1 and no GMCS, but determined that Dr. Rook should have assigned a GMFH of 2 due to appellant’s antalgic gait with use of a cane.<sup>9</sup> Application of the net adjustment formula amounted to one, resulting in grade D warranting movement one place to the right of the default value for eight percent permanent impairment of the left lower extremity.

Dr. Estaris noted that while Dr. Rook had not submitted an impairment rating based on the range of motion (ROM) method, his examination findings provided three sets of ROM measurements such that impairment could be calculated. He noted that appellant’s range of motion was an appropriate alternative method for rating appellant’s permanent impairment, given appellant’s multiple diagnoses of left foot sprain and fracture. Utilizing Table 16-25, ROM ICF Classification, Dr. Estaris calculated nine percent permanent impairment of the left lower extremity based on measurements revealing decreased range of motion.<sup>10</sup> He noted the range of motion measurements and determined that for the left foot, 10 degrees dorsiflexion yielded seven percent impairment, 40 degrees plantar flexion yielded zero percent impairment, 15 degrees inversion yielded two percent impairment, and 20 degrees eversion yielded zero percent impairment for a combined nine percent permanent impairment. Thus, Dr. Estaris concluded that appellant was entitled to the nine percent permanent impairment rating as permitted by the ROM method over the lesser rated diagnosis-based impairment (DBI) method.

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<sup>7</sup> *Id.* at 517, Table 16-7.

<sup>8</sup> *Id.* at 516, Table 16-6.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 550, Table 16-25.

On March 1, 2018 OWCP expanded acceptance of the claim to include left tarsometatarsal ligament sprain.

By decision dated May 8, 2018, OWCP granted appellant a schedule award for nine percent permanent impairment of the left lower extremity. The date of MMI was found to be November 30, 2017 and the award covered a period of 25.92 weeks from November 30, 2017 to May 30, 2018. The schedule award was paid at the 75 percent augmented rate for a qualifying dependent.

### **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.<sup>11</sup> 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.<sup>12</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>13</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>14</sup> Under the sixth edition, the evaluator identifies the impairment class of diagnosis (CDX) condition, which is then adjusted by grade modifiers including GMFH, GMPE, and GMCS.<sup>15</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>16</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of permanent

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<sup>11</sup> 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

<sup>12</sup> 20 C.F.R. § 10.404. *See also* Ronald R. Kraynak, 53 ECAB 130 (2001).

<sup>13</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>14</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>15</sup> *Id.* at 494-531.

<sup>16</sup> *C.M.*, Docket No. 17-1692 (issued December 14, 2018).

impairment in accordance with the A.M.A., *Guides* with a DMA providing rationale for the percentage of impairment specified.<sup>17</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish more than nine percent permanent impairment of the left lower extremity, for which he previously received a schedule award.<sup>18</sup>

In support of his schedule award claim, appellant submitted a November 30, 2017 report from Dr. Rook who determined that review of the medical record and physical examination findings established a work-related fracture of appellant's left cuboid bone as a result of his February 15, 2000 employment injury. Dr. Rook calculated seven percent permanent impairment of the left lower extremity using the DBI methodology based on a class 1 diagnosis of left cuboid fracture with mild motion deficits.

The case file and Dr. Rook's report was routed to Dr. Estaris, serving as an OWCP DMA, who determined that appellant had reached MMI on November 30, 2017. Dr. Estaris noted appellant's diagnosis of left foot strain and agreed with Dr. Rook's diagnosis of left foot cuboid fracture resulting in class 1 for mild motion deficit. He also assigned a GMPE of 1 and no GMCS, but determined that Dr. Rook should have assigned a GMFH of 2 due to appellant's antalgic gait with use of a cane.<sup>19</sup> Dr. Estaris properly explained that application of the net adjustment formula for a class 1 cuboid fracture with mild motion deficits resulted in eight percent permanent impairment of the left lower extremity.<sup>20</sup>

The A.M.A., *Guides* explain that if there are multiple diagnoses of a lower extremity impairment at the time of MMI, the evaluating physician must determine which method best describes the impairment of a specific individual based on patient history and physical examination.<sup>21</sup> When uncertain about which method to use (*e.g.*, DBI or ROM), the evaluator should calculate the impairment using both alternatives and choose the method or combination of methods that gives the most clinically accurate permanent impairment rating.<sup>22</sup> The evaluating physician must explain, in writing, the rationale for the rating methodology used.<sup>23</sup>

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<sup>17</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (March 2017).

<sup>18</sup> *W.R.*, Docket No. 13-0492 (issued June 26, 2013).

<sup>19</sup> *Supra* note 7.

<sup>20</sup> *R.V.*, Docket No. 17-0731 (issued June 7, 2017).

<sup>21</sup> A.M.A., *Guides* 529.

<sup>22</sup> *Id.*; see also *T.T.*, Docket No. 09-1379 (issued March 10, 2010).

<sup>23</sup> *Id.*

The Board notes that Dr. Estaris explained that the ROM methodology provided the most accurate impairment evaluation, given appellant's left foot diagnosis.<sup>24</sup> Dr. Estaris also correctly noted that appellant's impairment rating could be calculated using the ROM method as Dr. Rook's examination findings provided three sets of range of motion measurements.<sup>25</sup> The DMA identified the range of motion measurements determining that for the left foot, 10 degrees dorsiflexion yielded seven percent impairment, 40 degrees plantar flexion yielded zero percent impairment, 15 degrees inversion yielded two percent impairment, and 20 degrees eversion yielded zero percent impairment for a combined nine percent permanent impairment of the left lower extremity.<sup>26</sup>

Appellant has not established that he has more than nine percent permanent impairment of the left lower extremity as the record does not contain a medical report in which a greater rating of permanent impairment has been provided. Accordingly, he has failed to meet his burden of proof.

On appeal appellant argues that he was entitled to continuing compensation for his accepted disability as he had been unable to return to any type of work since his left foot was crushed on February 15, 2000. The Board notes that its jurisdiction is limited to reviewing the issue before it from OWCP's May 8, 2018 schedule award decision. Appellant further argues that he had a child who was in college and he had filed the requisite forms establishing dependency. The Board notes OWCP's May 8, 2018 decision reflected that his award was paid at the 75 percent augmented compensation rate for qualifying dependents.

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 his burden of proof to establish more than nine percent permanent impairment of the left lower extremity, for which he previously received a schedule award.

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<sup>24</sup> *Supra* note 22.

<sup>25</sup> *D.W.*, Docket No. 17-1092 (issued October 22, 2018).

<sup>26</sup> *Supra* note 3 at 549.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 8, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2019  
Washington, DC

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

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

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