

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

_____	)	
<b>R.H., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0382</b>
	)	<b>Issued: November 1, 2019</b>
<b>U.S. POSTAL SERVICE, CANARSIE STATION,</b>	)	
<b>Brooklyn, NY, Employer</b>	)	
_____	)	

*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*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 December 18, 2017 appellant, through counsel, filed a timely appeal from a September 7, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

---

<sup>1</sup> 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.

<sup>2</sup> On November 27, 2017 appellant, through counsel, filed a timely appeal from a September 22, 2017 nonmerit decision. That appeal was addressed by the Board in Docket No. 18-0284 (issued July 9, 2018).

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

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

## FACTUAL HISTORY

On March 27, 1997 appellant, then a 34-year-old letter carrier, filed a traumatic injury claim (Form CA-1) for a right ankle injury incurred while in the performance of duty. OWCP accepted appellant's claim for right ankle sprain/strain.

The case remained dormant until November 9, 2016, when appellant filed a claim for a schedule award (Form CA-7).

In a development letter dated November 10, 2016, OWCP informed appellant that the case record was deficient and requested that she submit a report from her treating physician which provided a permanent impairment rating in support of her schedule award claim. It afforded her 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated December 30, 2016, OWCP denied appellant's schedule award claim finding that she had not provided medical evidence establishing permanent impairment of a scheduled member or function of the body due to her accepted right ankle sprain.

On January 5, 2017 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

In a report dated February 8, 2017, Dr. Kumar S. Reddy, a Board-certified orthopedic surgeon, provided a description of appellant's injury on March 27, 1997 which occurred while she was delivering mail, when a dog inside of a house charged the storm door which hit her and caused her to fall backward down two steps, landing on her right ankle. Appellant reported continuing right ankle pain and swelling. She noted that she was receiving disability retirement benefits. Dr. Reddy reviewed medical records including an August 18, 1997 orthopedic examination, an April 4, 2001 magnetic resonance imaging (MRI) scan of the right ankle, and December 18, 2012 right ankle x-rays. He provided appellant's right ankle range of motion figures which exhibited loss. Dr. Reddy found that she had 30 degrees of plantar-flexion, 10 degrees of dorsiflexion, and 15 degrees of both inversion and eversion. He diagnosed right ankle sprain resolved with residuals. Dr. Reddy concluded that appellant had reached maximum medical improvement (MMI). He applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>4</sup> and found that she had seven percent permanent impairment of the right ankle based on her loss of range of motion.<sup>5</sup>

A hearing was held on July 12, 2017. During the hearing, the hearing representative noted that Dr. Reddy had not provided an explanation as to how he had arrived at a lower extremity

---

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

<sup>5</sup> *Id.* at 549, Table 16-20 and Table 16-22.

impairment rating of seven percent or how the rating was causally related to appellant's accepted right ankle sprain.

Dr. Reddy provided a supplemental report on July 26, 2017 noting that appellant's right ankle sprain had reached MMI on February 8, 2017. He found that, based on her history, she had no preexisting right ankle conditions and that she had seven percent permanent impairment of her right ankle due to loss of range of motion.

By decision dated September 7, 2017, OWCP's hearing representative denied appellant's schedule award claim, finding that Dr. Reddy's reports were insufficient to establish that appellant sustained permanent impairment of her right lower extremity causally related to the accepted March 27, 1997 employment injury.

### **LEGAL PRECEDENT**

Under section 8107 of FECA<sup>6</sup> and section 10.404 of OWCP's implementing regulations,<sup>7</sup> schedule awards are payable for permanent impairment of specified body members, functions, or organs. FECA, however, does not specify the manner in which the percentage of impairment 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.<sup>8</sup> As of May 1, 2009, the sixth edition is used to calculate schedule awards.<sup>9</sup>

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based impairment (DBI) method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability, and Health (ICF).<sup>10</sup> In addressing lower extremity impairments, the sixth edition requires identification of the impairment class of diagnosis (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS).<sup>11</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>12</sup> Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores. Section 16.2a of the A.M.A., *Guides*, provides that, if the class selected is defined

---

<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Id.* at § 10.404(a).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Exhibit 4 (January 2010).

<sup>10</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009), page 3, Section 1.3, The International Classification of Functioning, Disability, and Health (ICF): A Contemporary Model of Disablement.

<sup>11</sup> *Id.* at 493-553

<sup>12</sup> *Id.* at 521.

by physical examination findings or clinical studies results, these same findings may not be used as grade modifiers to adjust the rating.<sup>13</sup>

Not all medical conditions accepted by OWCP result in permanent impairment of a scheduled member.<sup>14</sup> Before applying the A.M.A., *Guides*, OWCP must determine whether the claimed impairment of a scheduled member is causally related to the accepted employment injury.<sup>15</sup> 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.<sup>16</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish permanent impairment of her right lower extremity, entitling her to a schedule award.

In support of her claim for a schedule award appellant submitted reports dated February 8 and July 26, 2017 from Dr. Reddy. In the February 8, 2017 report, Dr. Reddy examined appellant's right ankle, noting no joint line tenderness, swelling, redness, crepitation, or drawer signs. He observed normal color and temperature and full strength. Appellant's right foot and ankle range of motion was found to be limited. Dr. Reddy diagnosed a resolved right ankle sprain with residuals and determined that she had reached MMI. He rendered a lower extremity impairment rating of seven percent, purportedly based on Chapter 16, Table 16-22 of the A.M.A., *Guides*.<sup>17</sup> In his July 26, 2017 report, Dr. Reddy explained that there were no preexisting conditions involving appellant's right ankle and that she had reached MMI with regard to her right ankle sprain on February 8, 2017. He reiterated that the percentage of impairment for appellant's right ankle was seven percent based on the same Table in the A.M.A., *Guides*.

The Board finds that Dr. Reddy noted that the diagnosed condition was a resolved sprain, with residuals. However, he did not explain what medical residuals would remain for a resolved ankle sprain which had occurred in March 1997, or how such residuals would result in a permanent functional impairment. As such, the Board finds that there is no medical evidence of record to establish that the claimed impairment of appellant's right ankle is causally related to the accepted 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.

---

<sup>13</sup> *Id.* at 500.

<sup>14</sup> *C.T.*, Docket No. 18-0544 (issued May 22, 2019); *Thomas P. Lavin*, 57 ECAB 353 (2006).

<sup>15</sup> *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *Michael S. Mina*, 57 ECAB 379, 385 (2006).

<sup>16</sup> *N.W.*, Docket No. 17-0427 (issued June 20, 2017); *Veronica Williams*, 56 ECAB 367 (2005).

<sup>17</sup> *See supra* note 5.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 7, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2019  
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