

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

_____	)	
<b>T.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-0865</b>
	)	<b>Issued: November 14, 2019</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Lancaster, CA, 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  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 15, 2019 appellant, through counsel, filed a timely appeal from a January 14, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider 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> 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 June 8, 2015 appellant, then a 58-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 4, 2015 she twisted her left ankle when driving her delivery route while in the performance of duty. She stopped work on June 5, 2015. Following a period of modified-duty work commencing in mid-August 2015, appellant returned to full-duty work.

In a report dated June 25, 2015, Dr. Sheryl A. Haggerty, a general practitioner, noted a history of a resolved left ankle fracture in 1960, a resolved occupational left ankle sprain in 2001, a 2014 dog bite to the left ankle, and the June 4, 2015 employment incident. She diagnosed a left ankle strain.

By decision dated October 28, 2015, OWCP accepted the claim for left ankle sprain.

In a report dated November 23, 2015, Dr. Haggerty found that appellant had attained maximum medical improvement (MMI). In a December 17, 2015 report, she found full range of left ankle motion without pain and discharged appellant from care.

On April 20, 2016 appellant filed a claim for a schedule award (Form CA-7).

In support of her claim, appellant submitted a June 15, 2016 impairment rating from Dr. Mesfin Seyoum, a family medicine specialist. Dr. Seyoum noted a fracture to the left fourth toe in February 2015, with no other left foot or ankle injuries prior to the June 4, 2015 employment incident. He provided findings on physical examination, noting a slightly guarded gait, minimal tenderness of the lateral aspect of the left ankle, full range of left ankle motion in all planes, and a normal sensory examination and reflexes throughout both lower extremities. Appellant scored 28 on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) Pain Disability Questionnaire (PDQ),<sup>3</sup> and obtained a minimal score on the American Academy of Orthopedic Surgeons (AAOS) lower limb questionnaire. Dr. Seyoum diagnosed left ankle sprain as the accepted condition and opined that based on the information available it appeared that her left ankle condition was caused by the accepted employment injury of June 4, 2015, which occurred while she was working as a mail carrier. He further opined that appellant had reached MMI on November 23, 2015.

Referring to the Table 16-2 of the A.M.A., *Guides*, foot and ankle regional grid, Dr. Seyoum calculated a rating of one percent permanent impairment of the left lower extremity for left ankle sprain.<sup>4</sup> He determined that this diagnosis resulted in a class 1 impairment with a

---

<sup>3</sup> A.M.A., *Guides*, (6<sup>th</sup> ed. 2009) at Appendix 3-1.

<sup>4</sup> *Id.* at 501.

default value of grade C, equaling one percent permanent impairment of the left lower extremity.<sup>5</sup> Dr. Seyoum assigned a grade modifier of 1 for functional history (GMFH) based on appellant's AAOS and PDQ questionnaire scores,<sup>6</sup> a grade modifier of 1 for physical examination (GMPE),<sup>7</sup> and no applicable modifier for clinical studies (GMCS).<sup>8</sup> Applying the net adjustment formula, (GMFH - CDX) + (GMPE - CDX), he subtracted 1, the numerical value of the class, from the numerical value of the grade modifiers, (1-1) + (1-1), and then combined those values, resulting in a net adjustment of zero.<sup>9</sup> This resulted in a final permanent impairment rating of one percent of the left lower extremity.

On April 18, 2017 OWCP routed Dr. Seyoum's report, a statement of accepted facts, and the case record to Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), for review and evaluation of appellant's permanent impairment pursuant to the A.M.A., *Guides*. It also asked Dr. Fellars to provide a date of MMI.

In a May 18, 2017 report, the DMA reviewed the case file and determined that appellant had reached MMI on December 17, 2015. He disagreed with Dr. Seyoum's permanent impairment rating as she had a completely normal examination at her final medical visit with her treating provider on December 17, 2015. The DMA opined that, according to Table 16-2 at page 501 of the A.M.A., *Guides*,<sup>10</sup> appellant had a class 0 impairment resulting in zero percent left lower extremity permanent impairment.

By decision dated May 19, 2017, 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 May 25, 2017 appellant, through counsel, requested a telephonic oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated October 5, 2017, an OWCP hearing representative found that the case was not in posture for decision. He set aside the May 19, 2017 decision and remanded the case to OWCP as further development was warranted. The hearing representative explained that as Dr. Seyoum was the only physician who provided an impairment rating, a second opinion examination was warranted.

---

<sup>5</sup> Dr. Seyoum's June 15, 2016 impairment rating notes a class 2, grade C diagnosis-based impairment (DBI), equaling one percent left lower extremity impairment. However, he noted a class of diagnosis (CDX) of 1 in his application of the net adjustment formula. Therefore, the Board finds that Dr. Seyoum's initial reference to a class 2 CDX was a typographical error.

<sup>6</sup> *Supra* note 3 at 516, Table 16-6.

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

<sup>8</sup> *Id.* at 519, Table 16-8.

<sup>9</sup> *Id.* at 521.

<sup>10</sup> *Id.* at 501, Table 16-2.

On December 6, 2017 OWCP referred appellant for a second opinion examination with Dr. Mark D. Bernhard, an osteopathic physician Board-certified in physiatry, to determine whether her accepted left ankle sprain caused permanent impairment of the left lower extremity.

In a January 19, 2018 report, Dr. Bernhard noted appellant's history of injury, medical treatment, and physical examination findings, including her complaints of occasional dull aching and stiffness of the left ankle. He determined that she reached MMI as of June 15, 2016, the date of Dr. Seyoum's examination. Appellant scored a nine on the AAOS lower limb questionnaire, indicating a minimal impairment according to Table 16-6.<sup>11</sup> On examination, Dr. Bernhard observed full range of motion (ROM) of both ankles in all planes, with no atrophy in either lower extremity. He referred to Table 16-2 of the A.M.A., *Guides* to diagnose a left ankle strain CDX. Dr. Bernhard found a GMFH of zero as appellant had a minimal questionnaire result and no gait derangement, a GMPE of zero as she had no consistent findings, no palpatory findings, and normal ROM. He applied the net adjustment formula, (GMFH - CDX) + (GMPE - CDX), to calculate zero percent permanent impairment of the left lower extremity. Dr. Bernhard noted that utilizing the ROM rating method also resulted in zero percent impairment of the left lower extremity.

On March 7, 2018 the DMA reviewed Dr. Bernhard's second opinion evaluation and concurred with his rating methodology and application of the A.M.A., *Guides*. He opined that appellant had zero percent permanent impairment of the left lower extremity. The DMA confirmed that appellant attained MMI on December 17, 2015, the date of Dr. Haggerty's examination.

In a March 14, 2018 report, Dr. Seyoum noted his disagreement with Dr. Bernhard's January 19, 2018 impairment rating. He contended that appellant had one percent permanent impairment of the left lower extremity according to Table 16-2,<sup>12</sup> based on a CDX of 1, grade C left ankle sprain, equal to one percent lower extremity impairment. Dr. Seyoum assessed a GMFH of one for a PDQ score of 28, and a GMPE of zero according to Table 16-7.<sup>13</sup> He noted that there was no applicable GMCS as there were no relevant clinical studies of record. Applying the net adjustment formula, (GMFH - CDX) + (GMPE - CDX), or (1-1) + (0-1), resulted in a net adjustment of negative one, which lowered the default CDX grade of C one position to the left, equal to a one percent permanent impairment of the left lower extremity. Dr. Seyoum opined that the ROM rating methodology was not applicable as appellant had a full range of left ankle motion at the time of his June 15, 2016 examination.

By decision dated July 25, 2018, OWCP denied appellant's claim for a schedule award as the evidence of record was insufficient to establish permanent impairment to a scheduled member or function of the body.

On July 31, 2018 appellant, through counsel, requested a telephonic oral hearing before a representative of OWCP's Branch of Hearings and Review. At the hearing, held December 11, 2018, appellant asserted that she had minimal symptoms with weather changes.

---

<sup>11</sup> *Id.* at 516, Table 16-6.

<sup>12</sup> *Id.* at 501, Table 16-2.

<sup>13</sup> *Id.* at 517, Table 16-7.

By decision dated January 14, 2019, an OWCP hearing representative affirmed the July 25, 2018 decision denying appellant's schedule award claim.

### **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>14</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 A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>15</sup>

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>16</sup> 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.<sup>17</sup>

The A.M.A., *Guides* provide a 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 CDX condition, which is then adjusted by GMFH, GMPE, and GMCS.<sup>18</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>19</sup> Evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.<sup>20</sup>

---

<sup>14</sup> 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

<sup>15</sup> *Id.* at § 10.404. See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>16</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

<sup>17</sup> *L.N.*, Docket No. 18-0156 (issued August 21, 2019); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>18</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009) at 493-531.

<sup>19</sup> *Id.* at 521.

<sup>20</sup> *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

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.<sup>21</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP DMA for an opinion concerning the nature and percentage of permanent impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.<sup>22</sup>

### 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 a June 15, 2016 impairment rating and March 14, 2018 supplemental report from Dr. Seyoum in support of her claim. Dr. Seyoum's reports are 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 November 23, 2015. Dr. Seyoum discussed his impairment calculations. Citing Table 16-2, Foot and Ankle Regional Grid, of the A.M.A., *Guides*, he calculated one percent permanent impairment of the left lower extremity for left ankle sprain with mild pain symptoms.

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.<sup>23</sup> Although Dr. Seyoum attributed appellant's subjective symptoms to the accepted June 4, 2015 left ankle sprain, he found no objective signs of the resolved employment injury.<sup>24</sup> Additionally, he did not mention the 1960 right ankle fracture and 2001 right ankle sprain noted by Dr. Haggerty in her June 25, 2015 report. As such, Dr. Seyoum's reports are based on an incomplete history and are insufficient to establish appellant's claim.<sup>25</sup> Therefore, the Board finds that his opinions are insufficient for her to meet her burden of proof to establish that her left ankle permanent impairment is causally related to her accepted July 4, 2015 employment injury.

---

<sup>21</sup> See *T.O.*, Docket No. 18-0659 (issued August 8, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>22</sup> See *supra* note 16 at Chapter 2.808.6(f) (March 2017).

<sup>23</sup> *Supra* note 21.

<sup>24</sup> See *V.S.*, Docket No. 16-0464 (issued June 1, 2016).

<sup>25</sup> The Board has held that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of limited probative value. *H.A.*, Docket No. 18-1466 (issued August 23, 2019); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

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>26</sup>

On appeal counsel contends that OWCP failed to give due deference to the findings of appellant's physicians. As found above, Dr. Seyoum provided insufficient medical rationale to meet her burden of proof.

### **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.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 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

---

<sup>26</sup> See *W.H.*, Docket No. 19-0102 (issued June 21, 2019); *Linda T. Brown*, 51 ECAB 115 (1999).