

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

A.C., Appellant)	
)	
and)	Docket No. 18-1306
)	Issued: October 18, 2019
U.S. POSTAL SERVICE, AIKEN POST)	
OFFICE, Aiken, SC, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 19, 2018 appellant filed a timely appeal from an April 11, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than one percent permanent impairment of the right leg, for which he previously received a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the April 11, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On October 6, 2017 appellant, then a 53-year-old city carrier, hyperextended his right leg when dismounting his delivery truck while in the performance of duty. OWCP accepted his traumatic injury claim (Form CA-1) for right leg (calf) strain. Appellant received continuation of pay beginning October 7, 2017 and he resumed his full-time, regular duties effective January 4, 2018.

Dr. David B. Minter, a Board-certified orthopedist, began treating appellant for his right calf strain on October 10, 2017. In a December 19, 2017 follow-up report, he indicated that appellant's right calf strain continued to improve. Dr. Minter noted findings upon examination of muscle aches, arthralgias/joint pain, swelling in the extremities, and residual weakness in his calf. He diagnosed work-related right calf strain injury on October 6, 2017. Dr. Minter advised that appellant could return to full duty on January 2, 2018, at which time he would be at maximum medical improvement (MMI). He further noted in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)³ that appellant had five percent permanent impairment to the right lower extremity.

In January 2018, appellant filed a claim for a schedule award (Form CA-7). In a January 30, 2018 note, Dr. Minter indicated that he treated appellant in follow-up for strain of the right calf muscle. He noted findings for the right calf of reduced tenderness, reduced swelling, and improving strength. Dr. Minter diagnosed work-related sprain of the calf muscle on October 6, 2017. He again noted that appellant had reached MMI and had five percent permanent impairment of the right lower extremity.

In an January 30, 2018 letter, OWCP requested that appellant provide an impairment evaluation pursuant to the sixth edition of the A.M.A., *Guides*. It specifically requested that he arrange for the submission of a detailed narrative medical report from his treating physician based upon a recent examination in accordance with the A.M.A., *Guides*. OWCP acknowledged receipt of the impairment rating dated December 19, 2017 from Dr. Minter.

OWCP subsequently received an additional copy of Dr. Minter's January 30, 2018 treatment records.

In a report dated March 28, 2018, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon and OWCP district medical adviser (DMA) reviewed Dr. Minter's December 19, 2017 and January 30, 2018 reports which diagnosed a right calf muscle strain. The DMA indicated that the established diagnosis was right calf muscle strain. Pursuant to Table 16-2 (Foot and Ankle Regional Grid) beginning on page 501 of the A.M.A., *Guides*, calf muscle strain, appellant was a class 1 for a diagnosis-based rating (with palpatory findings and or radiographic findings) for one percent lower extremity impairment. The medical adviser explained that the ankle regional grid, Table 16-2, page 501-08, required documented motion deficits to qualify for five percent

³ A.M.A., *Guides* (6th ed. 2009).

impairment and the examination reports of Dr. Minter had not documented motion deficits in his right lower extremity. He noted that the date of MMI was January 30, 2018.

By decision dated April 11, 2018, OWCP granted appellant a schedule award for one percent permanent impairment of the right leg. The period of the award was for 2.88 weeks and ran from January 30 to February 19, 2018.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁴ and its implementing federal regulations,⁵ 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.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

In addressing lower extremity impairments, the sixth edition requires identification of the impairment class of diagnosis (CDX) condition, which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁸ OWCP 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 impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of permanent impairment specified.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than one percent permanent impairment of the right leg, for which he previously received a schedule award.

In his December 19, 2017 and January 30, 2018 follow-up treatment notes, Dr. Minter indicated that appellant had reached MMI and had five percent impairment of the right lower extremity. However, he failed to explain how appellant's accepted strain of his right calf muscle

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ A.M.A., *Guides* 494-531 (6th ed. 2009).

⁹ *See P.R.*, Docket No. 18-0022 (issued April 9, 2018); Federal (FECA) Procedure Manual, *supra* note 7 at Chapter 2.808.6f (March 2017).

represented five percent permanent impairment under the A.M.A., *Guides* (6th ed. 2009). The Board has held that an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed.¹⁰

OWCP properly routed appellant's medical record to a DMA who utilized the findings in Dr. Minter's December 19, 2017 and January 30, 2018 reports and determined that appellant had one percent permanent impairment of the right leg due to tenderness on palpation pursuant to the A.M.A., *Guides*.¹¹ The DMA further noted that Dr. Minter had not documented motion deficits in the lower extremity which would justify five percent impairment of the right leg.¹² He properly applied the A.M.A., *Guides* to the clinical findings provided in Dr. Minter's reports and reached an impairment rating of one percent for the right leg. This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than one percent permanent impairment of the right leg. There is no other medical evaluation of record explaining how, pursuant to the A.M.A., *Guides*, appellant has more than one percent permanent impairment of the right leg.

On appeal appellant argues that Dr. Minter's reports were sufficiently detailed and rationalized to support five percent permanent impairment of the right leg. As noted, Dr. Minter failed to explain how he reached his impairment rating and had not reported motion deficits in the leg. Therefore, the Board finds that the medical evidence of record does not establish more than one percent right lower extremity permanent impairment.

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 greater than one percent permanent impairment of the right lower extremity, for which he previously received a schedule award.

¹⁰ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

¹¹ See A.M.A., *Guides* 501, Table 16-2.

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 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