United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
	)	
and	)	**Docket No. 20-1016**
	)	**Issued: December 8, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Spring Valley, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On April 11, 2020 appellant filed a timely appeal from an April 6, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the April 6, 2020 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish more than one percent permanent impairment of each lower extremity for which she previously received a schedule award.

FACTUAL HISTORY

On September 1, 2016 appellant, then a 54-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury as a result of factors of her federal employment. She noted that she first became aware of her condition on January 22, 2015 and realized its relationship to her federal employment on January 30, 2015. In undated narrative statements, appellant claimed that she developed a bilateral foot condition due to her repetitive work duties. OWCP accepted the claim for plantar fascial fibromatosis.

On April 13, 2018 appellant underwent authorized surgical excision of her left foot plantar fascia fibromatoses. On April 4, 2019 she underwent authorized surgical excision of her right foot plantar fibroma soft mass.

OWCP subsequently received a December 11, 2019 medical report by Dr. Jerome C. Hall, a Board-certified orthopedic surgeon. Dr. Hall noted a history of the employment injury and appellant's medical treatment. On physical examination of both feet he reported well-healed incisions over the plantar fascia extending from the mid foot into the forefoot. While the incisions were well healed on the left foot, there were several nodules consistent with fibromatosis. There was full range of motion of the ankles and subtalar joints, bilaterally. Palpation over the plantar aspect of the foot over incisions elicited significant pain and tenderness. There was pain and tenderness with compression of the heels, bilaterally, consistent with plantar fasciitis. A previously performed magnetic resonance imaging scan of the left foot showed what appeared to be plantar fibromatoses. Dr. Hall provided impressions of plantar fasciitis of the bilateral feet and bilateral plantar fibromatosis, status postsurgical treatment and excision of plantar fibromatoses in the bilateral feet. He referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[3] and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-2 (Foot and Ankle Regional Grid), page 501, the class of diagnosis (CDX) for plantar fasciitis of each foot resulted in a class 1, grade C impairment with a default value of one. Dr. Hall found no grade modifier adjustments from the default value of one percent, which resulted in one percent permanent impairment of each lower extremity. He determined that appellant reached maximum medical improvement (MMI) as of the date of his impairment evaluation.

On February 7, 2020 appellant filed a claim for a schedule award (Form CA-7).

In support of her claim, appellant submitted an October 30, 2019 industrial work status report from Dr. Jennifer G. Shih, a diagnostic radiologist. Dr. Shih diagnosed bilateral plantar fasciitis and bilateral metatarsalgia. She released appellant to return to full-capacity work as of

[3] A.M.A., *Guides* (6th ed. 2009).

the date of her report. Dr. Shih concluded that appellant was permanent and stationary with future medical care.

On February 21, 2020 OWCP routed Dr. Hall's December 11, 2019 report, a statement of accepted facts (SOAF), and the case record to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for review and a determination of permanent impairment in accordance with the sixth edition of the A.M.A., *Guides* and the date of MMI.

In a February 28, 2020 letter, Dr. Katz reviewed the SOAF and the medical record, including Dr. Hall's report. He concurred with Dr. Hall's finding of one percent permanent impairment of each lower extremity. The DMA also agreed with the diagnosis of plantar fasciitis/fibromatosis under Table 16-2, 501 of the sixth edition of the A.M.A., *Guides*, for both feet. Regarding the right lower extremity, he assigned a grade modifier for functional history (GMFH) of 1 and a grade modifier for physical examination (GMPE) of 1. The DMA found that a grade modifier for clinical studies (GMCS) was not applicable. He applied the net adjustment formula (GMFH - CDX) + (GMPE - CDX) = (1 - 1) + (1 – 1) = 0, which resulted in a class 1, grade C, one percent permanent impairment of the right lower extremity. Regarding the left lower extremity, the DMA concluded the same grade modifier calculations as the right lower extremity, which resulted in class 1 with a net adjustment of 0, which yielded a class 1, grade C, one percent permanent impairment. He determined that appellant reached MMI as of December 11, 2019, which corresponded with the date of Dr. Hall's impairment evaluation.

OWCP, by decision dated April 6, 2020, granted appellant a schedule award for one percent permanent impairment of each lower extremity. The period of the award ran for 5.76 weeks December 11, 2019 through January 20, 2020 and was based on the opinions of Dr. Hall and the DMA.

LEGAL PRECEDENT

The schedule award provisions of FECA[4] and its implementing 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 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.[6] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[7] The Board has approved the use

[4] *Supra* note 1 at § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id. See also Ronald R. Kraynak*, 53 ECAB 130 (2001).

[7] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Chapter 3.700, Exhibit 1 (January 2010).

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.[8]

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[9] In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the foot/ankle, reference is made to Table 16-2 (Foot and Ankle Regional Grid) of the A.M.A., *Guides*.[10] After the CDX is determined from the Foot and Ankle Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[11] 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.[12]

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 impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish more than one percent permanent impairment of each lower extremity, for which she previously received a schedule award.

Appellant submitted a December 11, 2019 report from Dr. Hall to support her claim for a schedule award. Dr. Hall reviewed her history of employment injury and conducted an examination. He provided impressions of plantar fasciitis of the bilateral feet and bilateral plantar fibromatosis, status postsurgical treatment and excision of plantar fibromatoses in the bilateral feet. Utilizing the DBI methodology under Table 16-2, page 501 of the sixth edition of the A.M.A., *Guides*, Dr. Hall found that appellant had a class 1, grade C impairment for plantar fasciitis of each foot. He found no grade modifier adjustments from the default value of one percent, which resulted in one percent permanent impairment of each lower extremity.

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

[9] A.M.A., *Guides*, page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[10] *See* A.M.A., *Guides* 501-08, Table 16-2.

[11] *Id*. at 515-22.

[12] *Id*. at 23-28.

[13] *See supra* note 7 at Chapter 2.808.6(f) (March 2017). *See also P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

OWCP properly referred the evidence of record to a DMA, Dr. Katz. In his February 28, 2020 report, the DMA concurred with Dr. Hall's finding that appellant had one percent permanent impairment of each lower extremity pursuant to the sixth edition of the A.M.A., *Guides*.

The Board finds that OWCP properly determined that the clinical findings and reports of Dr. Hall and the DMA constituted the weight of the medical evidence.[14] There is no probative medical evidence of record demonstrating greater impairment than that previously awarded.[15] Therefore, appellant has not met her burden of proof to establish an increased schedule award.

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 her burden of proof to establish more than one percent permanent impairment of each lower extremity, for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

[14] *K.M.*, Docket No. 19-1526 (issued January 22, 2020); *Y.S.*, Docket No. 19-0218 (issued May 15, 2020).

[15] *See K.M., id.*; *J.M.*, Docket No. 18-1334 (issued March 7, 2019).