

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

K.M., Appellant)	
)	
and)	Docket No. 19-1526
)	Issued: January 22, 2020
DEPARTMENT OF THE NAVY, NAVAL)	
INTERMEDIATE MAINTENANCE FACILITY,)	
Bangor, WA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 10, 2019 appellant filed a timely appeal from a June 21, 2019 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 over the merits of this case.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 14, 2018 appellant, then a 31-year-old electrician helper, filed a traumatic injury claim (Form CA-1) alleging that on May 11, 2018 he injured his right foot while in the performance of duty.² On June 13, 2018 OWCP accepted his claim for right foot displaced fracture of the second metatarsal bone, and on June 15, 2018 appellant underwent OWCP-approved right foot surgery.³ OWCP paid appellant wage-loss compensation through July 21, 2018. Appellant returned to work in a limited-duty capacity on August 3, 2018. His surgeon released him to resume full-time, regular-duty work, effective November 15, 2018. In a January 29, 2019 work capacity evaluation (Form OWCP-5c), Dr. Kessinger advised that appellant had reached maximum medical improvement.

On March 4, 2019 Dr. Marc I. Suffis, Board-certified in emergency medicine, provided an impairment rating, pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ He diagnosed right second TMT Lisfranc fracture/dislocation, status post ORIF. Pursuant to Table 16-2, Foot and Ankle Regional Grid, A.M.A., *Guides* 504, a Lisfranc injury (nondisplaced with minimal findings) represents a class 1 diagnosis (CDX), with a default rating (grade C) of three percent permanent impairment of the right lower extremity. Pursuant to Table 16-6, page 516 of the A.M.A., *Guides*, Dr. Suffis assigned a grade modifier of one for functional history (GMFH) based on a mild gait derangement. Pursuant to Table 16-7, page 517 of the A.M.A., *Guides* he also assigned a grade modifier of one for physical examination (GMPE) based on minimal palpatory findings. Lastly, pursuant to Table 16-8, page 518 of the A.M.A., *Guides*, Dr. Suffis assigned a grade modifier of three for clinical studies (GMCS) based on severe problems due to fracture dislocation at the Lisfranc joint. He then found that appellant had four percent permanent impairment of the right lower extremity.

On May 1, 2019 appellant filed a claim for a schedule award (Form CA-7).

In a May 22, 2019 report, Dr. Ari Kaz, a Board-certified orthopedic surgeon and OWCP district medical adviser (DMA), noted that he concurred with Dr. Suffis' finding of four percent permanent impairment of the right lower extremity. He agreed with the diagnosis of Lisfranc (fracture/dislocation) injury under Table 16-2, A.M.A., *Guides* 504. Dr. Kaz also concurred with Dr. Suffis' assigned grade modifiers, including the clinical studies grade modifier (GMCS 3) based on appellant's computerized tomography (CT) scan. Applying the net adjustment formula, the DMA found that a +2 adjustment was appropriate, which resulted in four percent (grade D)

² Appellant reported that he was on a break walking to the smoke shack when he caught his foot on a pallet and tripped.

³ Dr. Stacey M. Kessinger, a Board-certified orthopedic surgeon, performed the June 15, 2018 surgical procedure, which included right foot Lisfranc second tarsometatarsal (TMT) fracture/dislocation with open reduction and internal fixation (ORIF).

⁴ A.M.A., *Guides* (6th ed. 2009).

permanent impairment of the right lower extremity.⁵ He further found that appellant reached MMI as of March 4, 2019, which corresponded with the date of Dr. Suffis' examination.

By decision dated June 21, 2019, OWCP granted appellant a schedule award for four percent permanent impairment of the right lower extremity. The award covered an 11.52-week period from March 4 through May 23, 2019.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁶ and its implementing federal regulations,⁷ 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.⁸ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.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, the relevant portion of the lower extremity for the present case, reference is made to Table 16-2, Foot and Ankle Regional Grid, beginning on page 501.¹⁰ After the class of diagnosis (CDX) is determined from the Foot and Ankle Regional Grid (including identification of a default grade ("C") 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 an OWCP DMA for an opinion concerning the nature and percentage of

⁵ Net Adjustment (+2) = (GMFH 1 – CDX 1) + (GMPE 1 – CDX 1) + (GMCS 3 – CDX 1). A.M.A., *Guides* 521 (6th ed. 2009).

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ *Id.* at § 10.404(a).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹⁰ *See* A.M.A., *Guides* 501-08 (6th ed. 2009).

¹¹ *Id.* at 521.

¹² *Id.* at 23-28.

impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.¹³

ANALYSIS

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

Appellant submitted a March 4, 2019 impairment rating from Dr. Suffis who found four percent permanent impairment of the right lower extremity based on a diagnosis of Lisfranc fracture/dislocation under Table 16-2, A.M.A., *Guides* 504. Relying on his examination findings and a review of appellant's medical records, Dr. Suffis assigned appropriate grade modifiers for GMFH 1, GMPE 1, and GMCS 3, and concluded that appellant had four percent permanent impairment of the right lower extremity. Although Dr. Suffis did not clearly explain his net adjustment calculation, the DMA, upon further review, adequately explained how the assigned grade modifiers represented a +2 net adjustment, with a corresponding right lower extremity impairment of four percent (grade D) pursuant to Table 16-2, A.M.A., *Guides* 504.¹⁴

The Board finds that OWCP properly determined that the clinical findings and reports of Dr. Suffis and the DMA constituted the weight of the medical evidence.¹⁵ There is no probative medical evidence of record demonstrating greater impairment than that previously awarded.¹⁶

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 four percent permanent impairment of the right lower extremity for which he previously received a schedule award.

¹³ See *M.J.*, Docket No. 17-1776 (issued December 19, 2018); *P.R.*, Docket No. 18-0022 (issued April 9, 2018). See Federal (FECA) Procedure Manual, *supra* note 9 at Chapter 2.808.5 (March 2017).

¹⁴ See *supra* note 5.

¹⁵ *J.H.*, Docket No. 18-1207 (issued June 20, 2019); *M.C.*, Docket No. 15-1757 (issued March 17, 2016).

¹⁶ See *J.M.*, Docket No. 18-1334 (issued March 7, 2019).

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2020
Washington, DC

Patricia H. Fitzgerald, Deputy 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