

ISSUE

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

FACTUAL HISTORY

On August 7, 2017 appellant, then a 34-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on August 4, 2017 he sustained two fractures of his left ankle, deep bruising to his right heel, multiple stitches in his chin, sore teeth and gums, as well as contusions to his chest when the relief valve on a high pressure scuba tank that he was using failed to deploy and exploded while in the performance of duty.

Appellant underwent left ankle surgery including left talus open reduction and internal fixation with medial malleolar osteotomy to repair a left ankle comminuted talar neck fracture on August 5, 2017.

On September 22, 2017 OWCP accepted appellant's claim for left foot fracture and surgery. On February 14, 2018 it expanded acceptance of his claim to include the additional conditions of displaced fracture of the neck of the left talus, open wound of the scalp, and fractures of his teeth at 2, 3, 15, 18, and 31.

Appellant underwent a second left ankle arthroscopy for lysis of adhesions, major synovectomy, and hardware removal on September 26, 2018.

On March 26, 2019 Dr. Miguel A. Schmitz, an attending orthopedic surgeon, provided measurements of appellant's range of motion (ROM) of the left lower extremity including 10 degrees of dorsiflexion, 40 degrees of plantar flexion, 5 degrees of inversion, and 0 degrees of eversion. He described appellant's left ankle as stiff. Dr. Schmitz noted that appellant's left talus fracture was healed and that he had some postoperative pain associated with this condition which impacted his ability to run and walk at a typical pace.

In a report dated March 27, 2019, Dr. Schmitz found that appellant had reached maximum medical improvement (MMI) on March 26, 2019. He described appellant's surgeries and provided an impairment rating based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ Dr. Schmitz utilized Table 16-2, page 503, for a diagnosis of talus fracture with a class of diagnosis (CDX) of grade 1, with a default value of 5 for nondisplaced talus fracture with minimal findings. He found mild motion deficits, but no malalignment and no avascular necrosis. Dr. Schmitz further found grade modifier for function history (GMFH) of one in accordance with Table 16-6, page 516. He found a grade modifier for physical examination (GMPE) of zero as appellant had good range of motion and no arthrodesis. Dr. Schmitz reported a grade modifier for clinical studies (GMCS) of zero based on Table 16-8, page 519, as no radiographs had identified stability nonunion or arthrodesis. In applying the net adjustment formula, he found that appellant had a net adjustment of -2.

³ A.M.A., *Guides* (6th ed. 2009).

Dr. Schmitz then determined that appellant had mild motion deficits and/or mild malalignment, avascular necrosis without talar body collapse. He calculated a final rating of seven percent permanent impairment of the left lower extremity in accordance with Table 16-2, page 503 of the A.M.A., *Guides*.

On April 15, 2019 appellant filed a schedule award claim (Form CA-7).

OWCP referred Dr. Schmitz' rating report to a district medical adviser (DMA). In a report dated April 28, 2019, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as the DMA, reviewed the medical evidence of record and diagnosed status post open reduction and internal fixation of the left talus open fracture. He concurred with Dr. Schmitz that appellant had seven percent permanent impairment of his left lower extremity based on the diagnosis of a left talus fracture in accordance with Table 16-2, page 503 of the A.M.A., *Guides*. The DMA further found that appellant's diagnosed condition did not meet the criteria to allow impairment to be calculated by the ROM methodology as set forth in section 16.7, page 543, of the A.M.A., *Guides*. He concluded that appellant reached MMI on March 26, 2019.

By decision dated July 1, 2019, OWCP granted appellant a schedule award for seven percent permanent impairment of his left lower extremity.

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. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁶ 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.⁷

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning Disability

⁴ *Supra* note 2

⁵ 20 C.F.R. § 10.404.

⁶ For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also id.* at Chapter 3.700, Exhibit 1 (January 2010).

⁷ *X.Y.*, Docket No. 19-1290 (issued January 24, 2020); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

and Health (ICF).⁸ Under the sixth edition, the evaluator identifies the CDX, which is then adjusted by grade modifiers of GMFH, GMPE, and GMCS.⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰ Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹¹

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.¹²

ANALYSIS

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

In March 26 and 27, 2019 reports, Dr. Schmitz provided physical examination findings and provided a rating of permanent impairment based upon the sixth edition of the A.M.A., *Guides*. He indicated that appellant had a CDX of 1 for the diagnosis of a talus fracture with an initial grade C or five percent permanent impairment. Dr. Schmitz then applied the net adjustment formula, and increased the value rating to seven percent permanent impairment of the left lower extremity.

Consistent with its procedures,¹³ OWCP properly referred the matter to a DMA for an opinion regarding appellant's permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*.¹⁴

In April 28, 2019 report, Dr. Harris, serving as the DMA, identified the diagnosis for the left lower extremity as fracture of the talus in accordance with Table 16-2, page 503, of the A.M.A., *Guides*. He found that appellant had seven percent permanent impairment of the left lower extremity due to the accepted employment injury, concurring with Dr. Schmitz' impairment rating.

The Board finds that the DMA applied the appropriate tables and grading schemes of the A.M.A., *Guides* to Dr. Schmitz' clinical findings and properly calculated seven percent permanent impairment of appellant's left lower extremity. As there is no medical evidence of record in

⁸ A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3, International Classification of Functioning, Disability and Health ICF: A Contemporary Model of Disablement.

⁹ *Id.* at 494-531.

¹⁰ *Id.* 411.

¹¹ *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹² *Supra* note 6 at Chapter 2.808.6(f) (March 2017).

¹³ *Id.*

¹⁴ *X.Y.*, *supra* note 7; *J.J.*, Docket No. 18-1615 (issued March 5, 2019).

conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has greater than the seven percent permanent impairment of his left lower extremity previously awarded, the Board finds that appellant has not met his burden of proof to establish that he is entitled to additional schedule award compensation.¹⁵

Appellant may request a schedule award or an 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 seven percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the July 1, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 25, 2020
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ *S.C.*, Docket No. 19-1177 (issued August 27, 2020); *J.H.*, Docket No. 19-0395 (issued August 10 2020); *D.D.*, Docket No. 19-1676 (issued July 29, 2020).