

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

_____)	
L.C., Appellant)	
)	
and)	Docket No. 19-1951
)	Issued: October 27, 2020
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS & BORDER PROTECTION,)	
Carrizo Springs, TX, 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 September 24, 2019 appellant filed a timely appeal from a September 11, 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 permanent impairment of a scheduled member or function of the body, warranting a schedule award.

FACTUAL HISTORY

On August 21, 2017 appellant, then a 47-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on August 17, 2017 he injured his right heel when he

¹ 5 U.S.C. § 8101 *et seq.*

stepped down onto a rock to check a sensor while in the performance of duty. OWCP accepted appellant's claim for plantar fascial fibromatosis.

On August 24, 2017 appellant underwent a magnetic resonance imaging (MRI) scan of the right foot which revealed an 8 x 5 millimeter plantar fibroma within the medial plantar band of the plantar aponeurosis without associated edema or acute findings.

In an October 10, 2017 report, Dr. Helo Chen, a Board-certified family practitioner, noted that appellant presented for a right foot injury that occurred at work on August 17, 2017. In a report dated October 30, 2017, he noted findings on examination of right foot pain and decreased range of motion. Dr. Chen diagnosed plantar fascial fibromatosis and continued appellant's full-time modified-duty work status. He treated appellant in follow-up on February 5, 2018 for a right foot injury. In a duty status report (Form CA-17) dated February 5, 2018, Dr. Chen returned appellant to work full time without restrictions.

On April 19, 2018 Dr. Marisa C. Inigo, a Board-certified family practitioner, noted appellant's history of injury and treatment. She indicated that he reached maximum medical improvement (MMI) on April 19, 2018 and was released to work without restrictions. Findings on examination of the right foot revealed no pain, an itching feeling, no scars, swelling, laxity or spasms, no sign of deformity, mild tenderness at the medial central, normal strength at 5/5, deep tendon reflexes were normal, and intact neurological examination. Range of motion for the right foot for plantar flexion was 40 degrees, dorsiflexion was 25 degrees, inversion was 30 degrees, and eversion of 10 degrees. Dr. Inigo diagnosed plantar fascial fibromatosis. She referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² and opined that appellant had two percent permanent impairment of the right lower extremity for soft tissue plantar fibromatosis. With regard to the diagnosis-based impairment (DBI), Dr. Inigo referenced Table 16-2 of the sixth edition of the A.M.A., *Guides*, pages 502-03, Foot and Ankle Regional Grid, soft tissue plantar fibromatosis, and found that appellant fell in class 1, with significant consistent palpatory findings and/or radiographic findings, which provides for a zero to two percent maximum impairment with a grade modifier.

On June 12, 2018 appellant filed a claim for a schedule award (Form CA-7).

In a report dated June 26, 2018, Dr. Ari Kaz, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), applied the A.M.A., *Guides* to the medical findings provided by Dr. Inigo. He calculated impairment under the range of motion (ROM) method and the DBI method. In calculating impairment under the ROM method, the DMA based his findings on Table 16-22, page 549, of the sixth edition of the A.M.A., *Guides* and found that appellant's eversion of 10 degrees equates to two percent impairment and his inversion of 30 degrees qualifies for a zero percent impairment. He concluded that, based on the ROM method, appellant had two percent permanent impairment of the right lower extremity. The DMA noted that Dr. Inigo opined that appellant had two percent impairment using the DBI method, but that she failed to explain how she calculated this rating. He opined that appellant made a full recovery and had no pain, but "itching" in his right foot. The DMA referred to the Foot/Ankle Regional Grid, Table 16-2, page

² A.M.A., *Guides* (6th ed. 2009).

501, of the sixth edition of the A.M.A., *Guides* and explained that appellant's soft tissue plantar fibromatosis equated to a class zero as he had no significant objective abnormal findings or radiographic studies at MMI. He noted that appellant reported mild tenderness which would not qualify as "significant" under the A.M.A., *Guides* criteria. Based on the specifications within the A.M.A., *Guides*, appellant had zero percent permanent impairment under the DBI method. The DMA calculated two percent permanent impairment for loss of ROM and opined that the DBI method should be discarded as it yielded a zero percent impairment based on the above findings that appellant had no pain and no significant pathology as it related to his work injury.

On March 28, 2019 OWCP provided appellant with a copy of the DMA report and requested that he share this letter with Dr. Inigo and respond to an attached questionnaire.

In a report dated April 2, 2019, Dr. Inigo disagreed with the DMA's opinion. She indicated that appellant had two percent right lower extremity impairment based on her clinical examination and the A.M.A., *Guides*. Dr. Inigo indicated that the DMA did not perform a medical examination and she believed the rating must be based on a clinical examination not on medical records. She contended that her impairment rating correctly utilized her clinical examination and reported subjective and objective information obtained during the examination.

On April 3, 2019 OWCP referred appellant to Dr. James Butler, a Board-certified orthopedic surgeon, for a second opinion examination. It requested that Dr. Butler provide an opinion on permanent impairment consistent with the provisions of the sixth edition of the A.M.A., *Guides*.

In a report dated April 25, 2019, Dr. Butler noted that he had conducted a physical examination and made findings based on appellant's right foot range of motion, sensation, strength, weakness, ambulation, and tenderness. He diagnosed right plantar fascial fibromatosis. Findings on examination revealed no scars or swelling of the right foot, strength and motor testing of the lower extremity was intact, heel walk performed without difficulty, deep tendon reflexes were positive and equal, no effusion, negative anterior drawer test, and tenderness over the right foot, ankle, and middle of the sole. Range of motion findings for plantar flexion was 45 degrees, dorsiflexion/extension was 20 degrees, inversion was 25 degrees, and eversion was 20 degrees. Dr. Butler indicated that appellant reached MMI on April 25, 2019, the date of his examination. He found no evidence of restriction of the right ankle movement with plantar flexion, dorsiflexion, inversion, and eversion. Dr. Butler noted tenderness to palpation of the right foot along the middle of the sole, no masses or tightness, normal range of motion, no swelling, no sensory deficits, no weakness, no atrophy, and normal gait. He utilized Table 16-2, Foot and Ankle Regional Grid at page 503 of the sixth edition of the A.M.A., *Guides*. Dr. Butler opined that appellant had a class of diagnosis (CDX) of 1 for a diagnosis of right foot plantar fascial fibromatosis, with significant consistent palpatory findings and/or radiographic findings. He noted a grade modifier for functional history (GMFH) of zero based on no gait abnormality, a grade modifier for physical examination (GMPE) of 1 for persistent palpatory findings, and grade modifier for clinical studies (GMCS) of 1 based on a right foot MRI scan with confirmed diagnoses. Dr. Butler calculated a net adjustment of -1 for a rating of 1 percent permanent impairment of the right lower extremity. He further noted that using the ROM method would yield an impairment rating of zero.

In a June 18, 2019 report, the DMA reviewed the April 2, 2019 letter of clarification from Dr. Inigo and the April 25, 2019 second opinion report from Dr. Butler. He referred to the A.M.A., *Guides*, Foot/Ankle Regional Grid, Table 16-2, at page 501 and used the diagnostic key factor of plantar fibromatosis. The DMA assigned a GMFH of zero for no limp; a GMPE of 1 for minimal palpatory findings of heel tenderness consistently documented. Dr. Butler found the clinical studies modifier was grade 1, but the DMA disagreed with this finding. He noted the MRI scan of August 24, 2017 clearly demonstrated that appellant had an eight millimeter by four millimeter plantar fibroma with no associated edema or acute findings. The DMA opined that this was an essentially normal MRI scan with a preexisting unrelated plantar fibroma supported by the radiologist statement that there was no surrounding edema and no acute abnormalities. He further opined that if the injury of August 17, 2017 was responsible for the MRI scan findings one would expect to see edema or bruising. Therefore the DMA noted that this would fall under “no significant objective findings” for a class zero. Using the net adjustment formula he calculated an impairment rating of zero percent under the DBI method.

On September 11, 2019 OWCP denied appellant’s claim for a schedule award based on the DMA’s June 18, 2019 report.

LEGAL PRECEDENT

The schedule award provisions of FECA,³ and its implementing federal regulations,⁴ 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*, published in 2009.⁵ 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.⁶

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 and Health (ICF).⁷ Under the sixth edition, the evaluator identifies the impairment CDX, which

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.404.

⁵ 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* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁶ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁷ 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.

is then adjusted by GMFH, GMPE, and GMCS.⁸ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁹ Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹⁰

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the percentage of permanent impairment using the A.M.A., *Guides*.¹¹

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP accepted appellant's claim for plantar fascial fibromatosis as a result of his August 17, 2017 employment injury. In support of his claim for a schedule award, appellant submitted an April 19, 2018 report from Dr. Inigo who opined that appellant had two percent permanent impairment of the right lower extremity for soft tissue plantar fibromatosis. In support of her finding, Dr. Inigo used the DBI method, referencing Table 16-2 of the sixth edition of the A.M.A., *Guides*, pages 502-03, Foot and Ankle Regional Grid, soft tissue plantar fibromatosis, and found that appellant was a class 1, with significant consistent palpatory findings and/or radiographic findings, which provides for a zero to two percent maximum impairment with a grade modifier.

Dr. Kaz, serving as a DMA, reviewed Dr. Inigo's reports and disagreed with her findings. He referred to the A.M.A., *Guides*, Foot/Ankle Regional Grid, Table 16-2, at page 501 and used the diagnostic key factor of plantar fibromatosis. Using the net adjustment formula, Dr. Kaz calculated an impairment rating of zero under the DBI method. He assigned a GMFH of zero for no limp, a GMPE of 1 for minimal palpatory findings, GMCS was grade zero as the MRI scan of August 24, 2017 confirmed the diagnoses, but found no associated edema or acute findings therefore "no significant objective findings."

In a report dated April 25, 2019, Dr. Butler, OWCP's referral physician, utilized Table 16-2, Foot and Ankle Regional Grid at page 503 of the A.M.A., *Guides* and calculated one percent impairment of the right lower extremity using the DBI method. He opined that appellant had a CDX of one for a diagnosis of right foot plantar fascial fibromatosis, with significant consistent palpatory findings and/or radiographic findings. Dr. Butler noted a GMFH of zero based on no gait abnormality, GMPE of one for persistent palpatory findings, and GMCS of 1 based on a right foot MRI scan with confirmed diagnoses. He calculated a net adjustment of -1 for a one percent impairment of the right lower extremity.

⁸ *Id.* at 494-531.

⁹ *Id.* at 521.

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

¹¹ *Supra* note 5 at Chapter 2.808.6(f) (March 2017); *B.B.*, Docket No. 18-0782 (issued January 11, 2019).

The Board finds that a conflict in the medical evidence exists between Dr. Inigo, appellant's treating physician, and Dr. Kaz, the DMA and Dr. Butler, OWCP's referral physician, regarding whether appellant had permanent impairment of the right lower extremity under the DBI method.¹² Therefore, the case must be remanded to OWCP for referral of appellant to an independent medical examiner for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a).¹³ After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2019 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 27, 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

¹² Dr. Kaz and Dr. Butler provided an alternate permanent impairment rating based on the ROM method. However, the ROM rating method is not available as an alternative to the DBI rating method because appellant's diagnosis of soft tissue plantar fibromatosis is not eligible for ROM rating method under the A.M.A., *Guides*. See A.M.A., *Guides* 543.

¹³ See *L.W.*, Docket No. 19-0722 (issued November 20, 2019).