United States Department of Labor
Employees' Compensation Appeals Board

L.D., Appellant	)	
and	)	**Docket No. 21-0096**
	)	**Issued: June 11, 2021**
U.S. POSTAL SERVICE, SOUTH TROOST STATION, Kansas City, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 23, 2020 appellant filed a timely appeal from a July 8, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish more than 16 percent permanent impairment of the right lower extremity for which she previously received a schedule award.

FACTUAL HISTORY

On July 13, 2012 appellant, then a 46-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a right ankle sprain as she fled from three

[1] 5 U.S.C. § 8101 *et seq.*

dogs that were chasing her while in the performance of duty.[2] On August 9 and 14, 2012 OWCP accepted the claim for right ankle sprain and right posterior tibial tendon attenuation. Appellant underwent an OWCP-authorized right posterior tibial tendon repair with application of right posterior cast-splint on September 7, 2012, right flexor digitorum longus (FDL) transfer, posterior tibial tendon debridement, cotton osteotomy with medial cuneiform, right medializing calcaneal osteotomy, right gastroc release, three views interpretation with use of fluoro on January 24, 2018, and removal of hardware from the first metatarsal of the right foot on August 29, 2018.

On January 8, 2019 appellant filed a claim for a schedule award (Form CA-7).

By decision dated March 11, 2015, OWCP granted appellant a schedule award for 16 percent permanent impairment of the right lower extremity (ankle). The award ran for 46.08 weeks from December 2, 2014 through October 20, 2015 and was based on the impairment ratings of Dr. Kala Danushkodi, a Board-certified physiatrist and an OWCP referral physician, and Dr. Daniel D. Zimmerman, a Board-certified internist serving as a district medical adviser (DMA).

Subsequently, on December 8, 2017 OWCP expanded the acceptance of appellant's claim to include rupture of other tendons of the right foot and ankle.

On January 7, 2019 appellant filed a claim for an increased schedule award (Form CA-7).

OWCP, by development letter dated January 10, 2019, requested that appellant submit an impairment evaluation from her attending physician that addressed whether she had obtained maximum medical improvement (MMI) and provided a permanent impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3]

In a January 4, 2019 progress note, Dr. Bryan G. Vopat, an attending Board-certified orthopedic surgeon, noted appellant's medical history, which included removal of hardware over her first metatarsal and a calcaneal osteotomy, FDL transfer, gastroc release and medial cuneiform osteotomy. He noted examination findings and advised that appellant had reached maximum medical improvement (MMI).

On February 27, 2019 OWCP referred the record, including a statement of accepted facts (SOAF), to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP DMA,

---

[2] OWCP assigned the claim File No. xxxxxx411. Appellant also has several prior claims. Under File No. xxxxxx455, OWCP accepted appellant's traumatic injury claim for contusion, medial meniscus tear, and Baker's cyst of the left knee sustained on February 12, 2011 and authorized left knee arthroscopy which was performed on September 26, 2011. Under File No. xxxxxx664, it accepted her occupational disease claim (Form CA-2) for enteropathy and tibialis tendinitis of the right ankle. Under File No. xxxxxx210, OWCP accepted appellant's traumatic injury claim for left knee sprain sustained on November 7, 2015 and authorized left knee arthroscopy which was performed on November 6, 2018. It accepted her occupational disease claim under File No. xxxxxx302 for right rotator cuff tear and authorized right arthroscopic rotator cuff repair, superior labral anterior posterior repair, subacromial decompression, distal clavicle excision, and extensive glenhumeral debridement of a type 1 anterior and posterior labral tear which were performed on February 3, 2017.

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

to determine appellant's percentage of permanent impairment pursuant to the sixth edition of the A.M.A., *Guides* and her date of MMI.

In a March 2, 2019 report, Dr. Harris reviewed the medical record, which indicated that appellant underwent right calcaneal osteotomy, medial cuneiform osteotomy, posterior tibial tendon debridement, FDL tendon transfer, and gastroc release on January 24, 2018 and right first metatarsal hardware removal on August 29, 2018. He utilized the diagnosis-based impairment (DBI) rating method of the sixth edition of the A.M.A., *Guides* at Table16-2, page 501, and determined that appellant had 10 percent permanent impairment of the right lower extremity due to her diagnosis of posterior tibial tendon insufficiency. Dr. Harris noted that the range of motion (ROM) impairment rating method was not applicable.

On April 22, 2019 OWCP referred appellant, together with a SOAF, and the case file to, Dr. Sivakoti R. Katta, a Board-certified orthopedic surgeon, for a second opinion evaluation of her permanent impairment for schedule award purposes.

In a May 8, 2019 report, Dr. Katta noted appellant's history of injury and medical treatment, and discussed examination findings. He provided: assessments of chronic right ankle tendinitis with associated osteoarthritis of the right ankle and foot; status post chronic sprain and posterior tibial tendon attenuation from appellant's July 13, 2012 work-related injury, and surgical repair performed on September 7, 2012, January 24 and August 29, 2018; osteoarthritis of both knee joints and left ankle; probable degenerative disc disease of the lumbar vertebrae without any radiculopathy; and hypertension. Utilizing the DBI method at Table 16-2, page 501 of the sixth edition of the A.M.A., *Guides*, Dr. Katta determined that appellant had six percent permanent impairment of the right lower extremity for a diagnosis of chronic right ankle sprain with associated posterior tibial tendon insufficiency. He noted that he did not use the ROM method because appellant's right ankle had full ROM. Dr. Katta determined that appellant reached MMI on January 4, 2019, the date of Dr. Vopat's examination.

On May 17, 2019 OWCP requested that Dr. Harris review Dr. Matta's May 8, 2019 report and provide whether he agreed with his findings.

In a May 21, 2019 report, Dr. Harris reviewed Dr. Matta's May 8, 2019 report and agreed with Dr. Matta that appellant had six percent permanent impairment of the right lower extremity pursuant to the A.M.A., *Guides* as a result of her accepted posterior tibial deficit. He determined that she reached MMI on May 8, 2019.

By decision dated July 3, 2019, OWCP denied appellant's claim for an increased schedule award for permanent impairment of her right lower extremity. It noted that she had previously been paid a schedule award for 16 percent permanent impairment of the right lower extremity.

On July18, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.[4] The hearing was held on November 4, 2019.

---

[4] Appellant retired on disability from the employing establishment effective September 16, 2019.

By decision dated January 17, 2020, an OWCP hearing representative affirmed the July 3, 2019 decision. She found that the weight of the medical opinion evidence established that appellant did not have more than the 16 percent right lower extremity permanent impairment previously awarded.

On May 12, 2020 appellant requested reconsideration. In support of her reconsideration request, he submitted an April 7, 2020 report from Dr. Zimmerman, who formerly served as OWCP's DMA. Dr. Zimmerman noted his review of appellant's medical records and discussed examination findings. He diagnosed double or triple arthrodesis of the midfoot with moderate malalignment as demonstrated by a right foot and ankle x-ray performed on the date of his examination. Dr. Zimmerman used the DBI method and determined that, under Table 16-2, page 508 of the sixth edition the A.M.A., *Guides*, appellant had 26 percent permanent impairment of the right lower extremity. He used grade modifiers in Table 16-6, Table 16-7, and Table 16-8 and the net adjustment formula based on class 3 for a class of diagnosis (CDX) of double or triple arthrodesis. Dr. Zimmerman determined that appellant had reached MMI as of the date of his impairment evaluation.

On May 26, 2020 OWCP requested that Dr. Harris review Dr. Zimmerman's April 7, 2020 report and determine whether he agreed with his impairment rating.

On May 29, 2020 Dr. Harris, DMA, reviewed Dr. Zimmerman's April 7, 2020 findings and disagreed with his impairment rating. He noted that appellant had not undergone double or triple arthrodesis. Instead, appellant had undergone a reconstructive procedure for posterior tibial insufficiency, including medial cuneiform osteotomy with tendon transfer. Dr. Harris advised that appellant reached MMI on April 7, 2020, the date of Dr. Zimmerman's impairment evaluation. He reiterated his prior opinion that she had six percent right lower extremity permanent impairment. Dr. Harris also reiterated that appellant's diagnosis did not meet the criteria to allow impairment to be calculated by the ROM methodology. He concluded that she had no increased impairment.

By decision dated July 8, 2020, OWCP denied modification of the January 17, 2020 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA[5] and its implementing regulations[6] 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

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

standard for evaluating schedule losses.[7] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[8] 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.[9]

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).[10] Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by grade modifiers based on grade modifier for functional history (GMFH), grade modifier for physical examination (GMPE), and grade modifier for clinical studies (GMCS).[11] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[12]

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).[13] 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.

In determining impairment for the lower extremities, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the knee, the relevant portion of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.[14] After the CDX is determined from the Knee 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).[15] Under Chapter 2.3, evaluators are directed to provide reasons for their

---

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

[8] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017).

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

[10] A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[11] *Id.* at 493-556.

[12] *Id.* at 521.

[13] *Supra* note 10.

[14] *Id.* at 509-11.

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

impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[16]

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.[17]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish more than 16 percent permanent impairment of the right lower extremity for which she previously received a schedule award.

In support of her claim for an increased schedule award, appellant submitted an April 7, 2020 report from Dr. Zimmerman, who used tables in the sixth edition of the A.M.A., *Guides* and opined that appellant had 26 percent permanent impairment of the right lower extremity due to her diagnosis of double or triple arthrodesis of the right midfoot with moderate malalignment. In accordance with its procedures, OWCP properly referred the medical record to Dr. Harris, a DMA,[18] who reviewed Dr. Zimmerman's April 7, 2020 report and concluded that Dr. Zimmerman erroneously based his impairment rating on a diagnosis of double or triple arthrodesis. He noted that appellant did not undergo double or triple arthrodesis, but instead she underwent a reconstructive procedure for posterior tibial insufficiency, including medial cuneiform osteotomy with tendon transfer.

Appellant also submitted Dr. Vopat's January 4, 2019 progress note in which he found that she had reached MMI status post the removal of hardware over her first metatarsal and a calcaneal osteotomy, FDL transfer, gastroc release and medial cuneiform osteotomy. However, he did not describe a permanent impairment due to her accepted right ankle sprain.[19] Before the A.M.A., *Guides* can be utilized a description of impairment must be obtained from the claimant's physician. The evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decrease in strength or disturbance of sensation or other pertinent descriptions of the impairment.[20] This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[21] The Board finds that

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

[17] *See supra* note 8 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).

[18] *Id*.

[19] *See K.J.,* Docket No. 19-1492 (issued February 26, 2020); *K.F.,* Docket No. 18-1517 (issued October 9, 2019).

[20] *See S.W.*, Docket No. 19-1078 (issued January 9, 2020).

[21] *K.F.*, *supra* note 19; *A.T.*, Docket No. 18-0864 (issued October 9, 2018).

Dr. Vopat's progress note does not describe the impairment to appellant's right ankle in sufficient detail so that it can be visualized on review, and does not compute the percentage of impairment in accordance with the A.M.A., *Guides*.

In a May 8, 2019 report, Dr. Matta, an OWCP referral physician, used the DBI method found at Table 16-2[22] and determined that appellant had six percent permanent impairment of the right lower extremity for a diagnosis of chronic right ankle sprain with associated posterior tibial tendon insufficiency.

OWCP again properly referred the medical record to Dr. Harris, a DMA,[23] who reviewed Dr. Matta's May 21, 2019 report and agreed with Dr. Matta that appellant had six percent permanent impairment of the right lower extremity pursuant to the A.M.A., *Guides* as a result of her accepted posterior tibial deficit.

The Board finds that OWCP properly determined that the clinical findings and reports of Dr. Matta and Dr. Harris constituted the weight of the medical evidence.[24] There is no probative medical evidence of record demonstrating greater impairment than that previously awarded.[25] 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 16 percent permanent impairment of the right lower extremity for which she previously received a schedule award.

---

[22] A.M.A., *Guides* 501, Table 16-2.

[23] *See supra* note 17.

[24] *D.L.,* Docket No. 20-1016 (issued December 8, 2020); *K.M.,* Docket No. 19-1526 (issued January 22, 2020); *Y.S.,* Docket No. 19-0218 (issued May 15, 2020).

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

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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