

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

M.C., Appellant	)	
	)	
and	)	Docket No. 21-0654
	)	Issued: March 10, 2023
U.S. POSTAL SERVICE, TACONY POST	)	
OFFICE, Philadelphia, PA, Employer	)	
	)	

*Appearances:*

Michael D. Overman, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On March 24, 2021 appellant, through counsel, filed a timely appeal from an October 21, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

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

## FACTUAL HISTORY

On October 23, 2000 appellant, then a 44-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a heel spur on his left foot causally related to factors of his federal employment. Appellant indicated that he first became aware of the condition on September 20, 2000 and related it to factors of his employment on October 10, 2000. He stopped work on October 13, 2000. OWCP accepted the claim for plantar fasciitis of the left foot. On April 27, 2001 appellant underwent a left foot plantar fasciotomy. He returned to his regular employment on August 20, 2001.

In an impairment evaluation dated July 23, 2018, appellant's treating physician, Dr. Munir Ahmed, a Board-certified internist, reviewed appellant's history of injuries to his neck, low back, right knee, right ankle, shoulders, and left foot. Regarding the left foot, he diagnosed post-traumatic left foot strain/sprain with evidence of plantar fasciitis and status post endoscopic plantar fasciotomy of the left foot.<sup>3</sup> Dr. Ahmed found a lower extremity activity scale (LEAS) score of 67 percent. He noted appellant's complaints of left foot pain, stiffness, swelling, numbness, and tingling. On examination, Dr. Ahmed observed stiffness with motion of the left foot and numbness and tingling on the inside of the foot. Referencing Table 16-2 on page 501 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>4</sup> he identified the class of diagnosis (CDX) as left plantar fasciitis, a Class 1 impairment, which yielded a default value of one percent. Dr. Ahmed found a grade modifier for functional history (GMFH) of 3, a grade modifier for physical examination (GMPE) of 2, and a grade modifier for clinical studies (GMCS) of 0. After utilizing the net adjustment formula, he found two percent permanent impairment of the left lower extremity.

On March 5, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated March 25, 2019, OWCP requested that Dr. Ahmed submit an impairment evaluation for the accepted condition of left plantar fibromatosis according to the sixth edition of the A.M.A., *Guides*. It afforded him 30 days to respond.

On September 5, 2019 Dr. Herbert White, Jr., a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), identified the CDX as plantar fasciitis with a Class 1 impairment using the diagnosis-based impairment (DBI) regional grid at Table 16-2 on page 501, which yielded a default value of one percent. He found a GMFH of 3 based on appellant's LEAS score of 67, a GMPE of 2 due to numbness and tingling, and a GMCS of 0 according to Table 16-

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<sup>3</sup> Dr. Ahmed also provided an impairment rating for other extremities.

<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

8 on page 519 as there were no clinical studies to review. Dr. White noted that if the GMFH differed by two or more grades from the GMPE or GMCS, the A.M.A., *Guides* indicated it should be assumed to be unreliable.<sup>5</sup> He thus found that the GMFH of 3 was unreliable as it differed by two or more grades from the GMCS. Utilizing the net adjustment formula, Dr. White found no change from the default value of one percent. He opined that appellant had reached maximum medical improvement (MMI) on July 23, 2018. On October 10, 2019 Dr. White clarified that the impairment rating was for the left lower extremity rather than the left foot.

By decision dated May 15, 2020, OWCP granted appellant a schedule award for one percent permanent impairment of the left leg. The period of the award ran for 2.88 weeks from July 23 to August 12, 2018.

On May 19, 2020 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on September 8, 2020. Counsel advised that he intended to submit a supplemental opinion from Dr. Ahmed explaining his use of grade modifiers.

Thereafter, OWCP received an addendum report dated August 28, 2020 from Dr. Ahmed. Dr. Ahmed noted that he and the DMA had agreed on the CDX and the GMPE and GMCS. He related that as the GMPE was 2, the GMFH of 3 should not be excluded.

By decision dated October 21, 2020, OWCP's hearing representative affirmed the May 15, 2020 decision.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>6</sup> and its implementing federal regulation,<sup>7</sup> 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.<sup>8</sup> The Board has approved the use by

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<sup>5</sup> *Id.* at 516.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6<sup>th</sup> ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

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.<sup>9</sup>

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): A Contemporary Model of Disablement*.<sup>10</sup> Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by GMFH, GMPE, and GMCS.<sup>11</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>12</sup> Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.<sup>13</sup>

### ANALYSIS

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

In a July 23, 2018 impairment evaluation, Dr. Ahmed indicated that appellant complained of pain, stiffness, swelling, numbness, and tingling in his left foot. He found a LEAS score of 68 percent. Dr. Ahmed identified the CDX as plantar fasciitis, with a Class 1 impairment, which yielded a default value of one percent. He found a GMFH of 3, a GMPE of 2, and a GMCS of 0. Dr. Ahmed determined that appellant had two percent permanent impairment of the left lower extremity after utilizing the net adjustment formula.

On September 5, 2019 Dr. White, the DMA, concurred with Dr. Ahmed's finding of a CDX of plantar fasciitis, with a Class 1 impairment, and his finding of a GMFH of 3, a GMPE of 2, and a GMCS of 0 as there were no clinical studies to review.<sup>14</sup> He found that the GMFH of 3 should be excluded as it exceeded the GMCS by more than two grades. The A.M.A., *Guides* provides that if the GMFH differs by two or more grades from the GMCS or the GMPE, it "should be assumed to be unreliable" and excluded from the grading process.<sup>15</sup> Dr. White utilized the net adjustment formula and found no change from the default value of one percent.<sup>16</sup>

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

<sup>10</sup> A.M.A., *Guides* 3 (6<sup>th</sup> ed. 2009), section 1.3.

<sup>11</sup> *Id.* at 494-531.

<sup>12</sup> *Id.* at 411.

<sup>13</sup> *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

<sup>14</sup> A.M.A., *Guides* 519, Table 16-8.

<sup>15</sup> *Id.* at 516.

<sup>16</sup> Utilizing the net adjustment formula discussed above, (GMPE-CDX) + (GMCS-CDX) or (2-1) + (0-1), = 0, yielded a zero adjustment.

In an August 28, 2020 addendum, Dr. Ahmed indicated that as the GMPE was two, the GMFH of three should not be excluded. However, as previously explained by the DMA, as the A.M.A., *Guides* provide that if the GMFH differs by two more from either the GMCS or the GMPE, it should be excluded from the grading process.<sup>17</sup> Dr. White has already considered Dr. Ahmed's opinion and determined that it was not in accordance with the provisions of the A.M.A., *Guides*.

The Board finds that the one percent left lower extremity permanent impairment rating from the DMA represents the weight of the medical evidence as he properly applied the provisions of the A.M.A., *Guides* to the clinical findings of record.<sup>18</sup> There is no medical evidence in conformance with the A.M.A., *Guides* showing greater impairment.<sup>19</sup>

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 permanent impairment.

### **CONCLUSION**

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

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<sup>17</sup> *Supra* note 15.

<sup>18</sup> *See O.M.*, Docket No. 21-0084 (issued June 4, 2021); *K.M.*, Docket No. 19-1526 (issued January 22, 2020).

<sup>19</sup> *See J.R.*, Docket No. 20-1224 (issued June 8, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2023  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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