

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

S.T., Appellant)	
)	
and)	Docket No. 22-1342
)	Issued: November 9, 2023
U.S. POSTAL SERVICE, EIGHTH AVENUE)	
POST OFFICE, Fort Worth, TX, Employer)	
)	

Appearances:
Appellant, pro se
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 September 21, 2022 appellant filed a timely appeal from an August 26, 2022 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than 17 percent permanent impairment of the right lower extremity or 2 percent of the left lower extremity, for which she previously received schedule award compensation.

FACTUAL HISTORY

On September 28, 2002 appellant, then a 38-year-old part-time flexible city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 27, 2002 she injured her

¹ 5 U.S.C. § 8101 *et seq.*

right foot when it became stuck in a waterhole while in the performance of duty.² She stopped work on October 7, 2002. OWCP accepted the claim for bilateral plantar fibromatosis. It paid appellant wage-loss compensation on the periodic rolls beginning November 16, 2002. On January 15, 2003 appellant underwent a right plantar fascia release. On April 9, 2003 she underwent left plantar fascia release.³

On May 30, 2007 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On July 25, 2008 Dr. Ronald H. Blum, an orthopedic surgeon serving as a district medical adviser (DMA), advised that appellant had 12 percent left lower extremity due to reflex sympathetic dystrophy (RSD) in accordance with Table 13-15 on page 336 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴

By decision dated November 12, 2008, OWCP granted appellant a schedule award for 12 percent permanent impairment of the right lower extremity and 0 percent permanent impairment of the left lower extremity in accordance with the fifth edition of the A.M.A., *Guides*. The period of the award ran for 34.56 weeks from April 10 through August 30, 2008.

On February 22, 2010 the DMA, Dr. Blum, advised that, based on Table 16-2 on page 501 of the sixth edition of the A.M.A., *Guides*,⁵ appellant had one percent permanent impairment of the right and left lower extremities due to plantar fasciitis. He found that, as she had previously received 12 percent permanent impairment of the right lower extremity for RSD, she was not entitled to an additional award for the right lower extremity.

By decision dated March 23, 2010, OWCP granted appellant a schedule award for one percent permanent impairment of the left lower extremity (left leg) based on the sixth edition of the A.M.A., *Guides*. The award ran for 2.88 weeks from March 31 through April 20, 2009.

On September 27, 2021 appellant underwent an OWCP-authorized partial plantar fasciectomy, left foot. She stopped work on September 28, 2012 and OWCP paid wage-loss compensation on the supplemental rolls beginning on that date and on the periodic rolls beginning October 1, 2012. On April 11, 2013 appellant underwent an OWCP-approved partial plantar

² OWCP assigned the present claim OWCP File No. xxxxxx569. Appellant subsequently filed an occupational disease claim (Form CA-2) for bilateral heel pain. OWCP assigned that claim OWCP File No. xxxxxx290 and accepted it for bilateral plantar fibromatosis. On January 2, 2002 it administratively combined OWCP File Nos. xxxxxx290 and xxxxxx569, with the latter serving as the master file.

³ By decision dated June 28, 2004, OWCP terminated appellant's wage-loss compensation benefits, effective July 10, 2004. Appellant requested an oral hearing from OWCP's Branch of Hearings and Review and by decision dated July 31, 2005, OWCP's hearing representative affirmed the June 28, 2004 OWCP termination decision.

⁴ A.M.A., *Guides*, (5th ed. 2001).

⁵ A.M.A., *Guides*, (6th ed. 2009).

fasciectomy and excision of the plantar heel spur of the right foot. She returned to full-time light-duty work on April 14, 2014.

On June 25, 2015 OWCP expanded the acceptance of appellant's claim to include right calcaneus deformity.

On October 27, 2015 appellant filed a Form CA-7 requesting an additional schedule award.

In a report dated November 4, 2015, Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a DMA, found that appellant had five percent permanent impairment due to a right calcaneal fracture and one percent permanent impairment due to plantar fasciitis, for six percent permanent impairment. He found that appellant had previously received an award of 12 percent for the right lower extremity for RSD. Dr. Katz combined the 6 percent impairment, which he found did not overlap the prior award, with the 12 percent permanent impairment previously awarded for RSD, to find 17 percent permanent impairment, or an additional 5 percent permanent impairment of the right lower extremity. Dr. Katz found that the evidence did not support that appellant had more than one percent permanent impairment of the left lower extremity due to plantar fasciitis.

By decision dated January 25, 2016, OWCP granted appellant a schedule for an additional five percent permanent impairment of the right lower extremity. The award ran for 14.4 weeks from December 1, 2015 through January 9, 2016.

In a report dated January 26, 2021, Dr. Karen M. Perl, an osteopath, noted appellant's history of injury and medical treatment. She related physical examination findings and provided a permanent impairment rating. Utilizing the diagnosis-based impairment (DBI) methodology under Table 16-2, Foot and Ankle Regional Grid, on page 501 of the A.M.A., *Guides*, Dr. Perl identified the class of diagnosis (CDX) for bilateral right plantar fasciitis as a Class 1 impairment. She applied a grade modifier for functional history (GMFH) of 1 using Table 16-6 on page 516, a grade modifier for physical examination (GMPE) of 2 using Table 16-7 on page 517, and a grade modifier for clinical studies (GMCS) of 2 using Table 16-8 on pages 519-20 of the A.M.A., *Guides*. Dr. Perl calculated a +2-grade modifier adjustment under the net adjustment formula,⁶ which resulted in a grade E or two percent permanent impairment of each lower extremity.

On May 17 and July 11, 2022 appellant filed Form CA-7 claims for additional schedule award compensation.

On July 18, 2022 OWCP referred the record, including a statement of accepted facts, to the DMA, Dr. Katz, to determine appellant's percentage of permanent impairment and date of maximum medical improvement (MMI). It did not inform the DMA that appellant had previously been granted schedule awards for five percent permanent impairment of the right lower and one percent permanent impairment of the left lower extremity.

In a report dated July 26, 2022, the DMA, Dr. Katz, provided his review of the medical record, including Dr. Perl's January 26, 2021 report. He noted that Table 16-2 did not provide

⁶ (GMFH - CDX) (2-1) + (GMPE - CDX) (2-1) + (GMCS - CDX) (1-1) equals 2 net adjustment.

range of motion (ROM) as an alternative rating method for the diagnosed impairing condition and opined that appellant had attained MMI as of January 26, 2021, the date of Dr. Perl's report. Dr. Katz agreed that her findings and conclusions were in accordance with the A.M.A., *Guides*.

On August 9, 2022 OWCP informed Dr. Katz of appellant's previous schedule awards totaling 17 percent of the right lower extremity and 1 percent of the right lower extremity. It requested a supplemental report.

In an August 12, 2022 supplemental report, Dr. Katz reaffirmed his previous permanent impairment ratings finding that appellant had two percent permanent impairment of each lower extremity due to plantar fasciitis according to Table 16-2 on page 501, of the A.M.A., *Guides*. He noted that, as the present right lower extremity impairment did not exceed the prior awards, no additional schedule award was due. Dr. Katz further found that appellant was entitled to a schedule award for an additional one percent permanent impairment of the left lower extremity.

By decision dated August 26, 2022, OWCP granted appellant a schedule award for an additional one percent permanent impairment of the left lower extremity for a total of two percent. It indicated that there was no additional impairment for the right lower extremity. The period of the award ran for 2.88 weeks from January 26 through February 15, 2021. OWCP noted that the schedule award was based on the January 26, 2021 report from Dr. Perl and the August 12, 2022 report from Dr. Katz, the DMA.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁷ and its implementing federal regulations,⁸ 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 of loss of a member 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 and the Board has concurred in such adoption.⁹ As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.¹⁰

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, the relevant portion of the leg for the present case, reference

⁷ *Supra* note 1.

⁸ 20 C.F.R. § 10.404.

⁹ *Id.* at § 10.404(a); *see also* *T.C.*, Docket No. 20-1170 (issued January 29, 2021); *T.T.*, Docket No. 18-1622 (issued May 14, 2019); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

is made to Table 16-2 (Foot and Ankle Regional Grid) beginning on page 501.¹¹ After the CDX is determined from the Foot Regional Grid (including identification of a default grade value), the net adjustment formula is applied using a GMFH, a GMPE, and/or a GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹² 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.¹³

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.¹⁴

It is well established that benefits payable under 5 U.S.C. § 8107(c) are reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.¹⁵

ANALYSIS

The Board finds that appellant has not met her burden of proof establish greater than 17 percent permanent impairment of the right lower extremity or 2 percent of the left lower extremity, for which she has previously received schedule award compensation.

Dr. Katz, the DMA, reviewed Dr. Perl's report on August 12, 2022 and concurred with her findings of two percent permanent impairment of the lower extremities, bilaterally, due to plantar fasciitis using the DBI method. He properly advised that ROM was not an alternative method for rating the condition, according to Table 16-2, as there was no asterisk next to the diagnosis in the Foot Regional Grid.¹⁶ As appellant had previously received an award for 17 percent permanent impairment of the right lower extremity which included an award of 2 percent for plantar fasciitis, Dr. Katz properly found that she was not entitled to an additional award. Dr. Katz found, however, that she had two percent permanent impairment due to left plantar fasciitis rather than the previously found one percent impairment, and thus was entitled to an additional award of one percent for the left lower extremity. When the prior impairment is due to a previous work-related

¹¹ See A.M.A., *Guides* (6th ed. 2009) at 501.

¹² *Id.* at 521.

¹³ *Id.* at 23-28.

¹⁴ See *supra* note 10 at Chapter 2.808.6(f) (March 2017). See also *B.C.*, Docket No. 21-0702 (issued March 25, 2022); *D.L.*, Docket No. 20-1016 (issued December 8, 2020); *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

¹⁵ 20 C.F.R. § 10.404(d). See *B.C.*, *id.*; *D.P.*, Docket No. 19-1514 (issued October 21, 2020); *S.M.*, Docket No. 17-1826 (issued February 26, 2018).

¹⁶ A.M.A., *Guides*, Table 16-2 at 501.

injury and a schedule award has been granted for such prior impairment, the percentage already paid is subtracted from the total percentage of impairment.¹⁷ Thus, Dr. Katz properly found that appellant was entitled to a schedule award for an additional one percent permanent impairment of the left lower extremity for a total of two percent permanent impairment.

There is no medical evidence in conformance with the sixth edition of the A.M.A., *Guides* establishing that appellant has greater than 17 percent permanent impairment of the right lower extremity and 2 percent permanent impairment of the left lower extremity. Thus, the Board finds that appellant has not established entitlement to additional schedule award compensation.¹⁸

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 her burden of proof establish greater than 17 percent permanent impairment of the right lower extremity and 2 percent of the left lower extremity, for which she previously received schedule award compensation.

¹⁷ *Supra* note 16; *see also* A.R., Docket No. 21-0346 (issued August 17, 2022).

¹⁸ *See* A.R., *id.*; K.H., Docket No. 20-1198 (issued February 8, 2021).

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 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