

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

S.R., Appellant	)	
	)	
and	)	Docket No. 23-0808
	)	Issued: November 30, 2023
U.S. POSTAL SERVICE, INGLEWOOD	)	
CARRIER ANNEX, Inglewood, CA, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On May 17, 2023 appellant filed a timely appeal from a December 14, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> 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 to consider the merits of this case.

**ISSUE**

The issue is whether appellant has greater than five percent permanent impairment of her right lower extremity for which she previously received a schedule award.

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<sup>1</sup> The Board notes that following the December 14, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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

## **FACTUAL HISTORY**

On August 25, 2020 appellant, then a 34-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed right foot and heel pain due to factors of her federal employment, including repetitive walking, ascending and descending stairs and hills, and mounting and dismounting her vehicle. She indicated that she first became aware of her condition and its relationship to her federal employment on December 4, 2019. Appellant stopped work on December 4, 2019, and returned to light-duty work on December 6, 2019. OWCP accepted the claim for plantar fascial fibromatosis and posterior tibial tendinitis, right leg. It paid wage-loss compensation from March 5 through June 13, 2022 when suitable light-duty work was unavailable.

Appellant submitted a May 20, 2022 report from Dr. Charles Xeller, a Board-certified orthopedic surgeon, who reported examination findings and indicated that he was providing permanent impairment ratings under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>3</sup> as she had reached maximum medical improvement. Dr. Xeller listed three bilateral ankle range of motion (ROM) measurements including right plantar flexion of 15, 20, and 20 degrees averaging 18 degrees, right dorsiflexion of 9, 11, and 10 degrees, averaging 10 degrees, a mild impairment in accordance with Table 16-22, page 549, right foot inversion of 11, 10, 11, averaging 10 degrees, a mild impairment in accordance with Table 16-20, page 549, and right foot eversion of 8, 6, and 6, averaging 6 degrees, also a mild impairment in accordance with Table 16-20, page 549, of the A.M.A., *Guides*. He applied the diagnosis-based impairment (DBI) rating method and found using Table 16-2, (Foot and Ankle Regional Grid), page 501, that right posterior tibial tendinitis had a default value of one. Dr. Xeller reported palpatory findings and x-rays studies, but no motion deficits resulting in grade modifier for clinical studies (GMCS) of 1, Table 16-8, page 518, grade modifier for physical examination (GMPE) of 1, Table 16-7, page 517, and grade modifier for functional history (GMFH) of 1, Table 16-6, page 516. Application of the net adjustment formula, page 521, A.M.A., *Guides*, resulted in one percent permanent impairment of the right lower extremity. Dr. Xeller further diagnosed plantar fasciitis with a heel spur, found that this was a Class 1 DBI impairment, with a default value of 1. He concluded that appellant had two percent permanent impairment of the right lower extremity.

On July 14, 2022 appellant filed a claim for a schedule award (Form CA-7).

On August 16, 2022 OWCP referred appellant's case to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA). In an August 23, 2022 report, Dr. Harris reviewed Dr. Xeller's May 20, 2022 report and diagnosed posterior tibial tendinitis with mild right ankle/hindfoot motion deficits resulting in a default value of five percent permanent impairment of the right lower extremity in accordance with Table 16-2, page 501.

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

By decision dated December 14, 2022, OWCP granted appellant a schedule award for five percent permanent impairment of her right lower extremity (right leg). The period of the award was for 14.4 weeks and ran from June 14 through September 22, 2022.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>4</sup> and its implementing federal regulations,<sup>5</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>6</sup> 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.<sup>7</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>8</sup> Under the sixth edition, the evaluator identifies the impairment class of diagnosis (CDX), which is then adjusted by a GMFH, a GMPE, and GMCS.<sup>9</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>10</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>11</sup>

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</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 Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

<sup>7</sup> *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>8</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009), p.3, section 1.3.

<sup>9</sup> *Id.* at 494-531.

<sup>10</sup> *Id.* at 411.

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

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*.<sup>12</sup>

### ANALYSIS

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

Appellant provided a May 20, 2022 report from Dr. Xeller finding that she had two percent permanent impairment of her right lower extremity due to tendinitis of the right posterior tibial tendon and plantar fasciitis with a heel spur. In an August 23, 2022 report, Dr. Harris, a DMA, reviewed Dr. Xeller's May 20, 2022 report and diagnosed posterior tibial tendinitis with mild right ankle/hindfoot motion deficits and assessed a default value of five percent permanent impairment of the right lower extremity in accordance with Table 16-2, page 501 of the A.M.A., *Guides*. OWCP granted appellant a schedule award for five percent permanent impairment of the right lower extremity (right leg).

The Board finds that the DMA properly applied the standards of the A.M.A., *Guides* to the physical examination findings and report of Dr. Xeller to find that appellant had five percent permanent impairment of the right lower extremity. The DMA accurately summarized the relevant medical evidence, including findings on examination, and reached conclusions regarding appellant's condition that comported with those findings. Thus, appellant has not established greater than five percent permanent impairment of her right lower extremity for which she previously received a schedule award.

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 permanent impairment.

### CONCLUSION

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

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<sup>12</sup> *Supra* note 6 at Chapter 2.808.6f (March 2017); *B.B.*, Docket No. 18-0782 (issued January 11, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 30, 2023  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board