

toe, left foot, and both knees when she fell while in the performance of duty. She stopped work on the date of injury and returned to full-duty work on February 14, 2020. OWCP accepted the claim for a contusion of the left foot, and localized swelling, mass, and lump of the left lower limb.

On June 15, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated June 16, 2020, OWCP informed appellant of the deficiencies of her schedule award claim. It requested that she submit a detailed narrative medical report from her treating physician based upon a recent examination that included whether she had reached maximum medical improvement (MMI), the diagnosis upon which the impairment rating was based, a detailed description of any preexisting impairment, and a final rating of the permanent impairment, with references to the applicable criteria and tables of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

Appellant provided a June 30, 2020 report from Dr. Todd K. Matthews, a podiatrist, who noted her history of injury and treatment and reviewed diagnostic testing. Dr. Matthews performed a physical examination, which revealed normal strength and intact sensation to the cutaneous nerves of the lower extremities with minimal varicosities. He also noted pronounced tenderness at the sinus tarsi with palpation without loss of range of motion of the left ankle or toes. Dr. Matthews diagnosed resolving left foot contusion and midfoot sprain, left foot edema, and left foot pain. Based on his examination findings, he opined that appellant had reached MMI as of June 30, 2020. Dr. Matthews further opined that she required no further treatment or restrictions, but that she continued to require left ankle/foot orthotics and supportive footwear. He applied the fifth edition of the A.M.A., *Guides*,³ Table 17-5, and determined that appellant had 15 percent permanent impairment of the left foot/ankle.

By letter dated August 7, 2020, OWCP requested that Dr. Matthews provide an opinion on whether appellant's accepted conditions resulted in a permanent impairment under the sixth edition of the A.M.A., *Guides*.⁴

On September 28, 2020 OWCP received a revised version of Dr. Matthews' June 30, 2020 report. Dr. Matthews applied the sixth edition of the A.M.A., *Guides*, and noted that the class of diagnosis (CDX) for ankle contusion was supportive of zero percent impairment. He explained that appellant's antalgic limp and asymmetric shortened stance, which required the use of orthotic inserts, resulted in a grade modifier for functional (GMFH) of 1 under Table 16-6. Dr. Matthews continued to find 15 percent permanent impairment of the left lower extremity "as she requires routine use of ankle-foot orthosis."

² A.M.A., *Guides* (6th ed. 2009).

³ A.M.A., *Guides* (5th ed. 2001).

⁴ *Supra* note 2.

On September 29, 2020 OWCP referred the record to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA) and requested that he evaluate appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.

In a report dated October 5, 2020, Dr. Harris reviewed the medical record, including the revised June 30, 2020 report of Dr. Matthews. He diagnosed left plantar fasciitis and found that the condition did not meet any of the criteria to allow for impairment to be calculated by the range of motion (ROM) method. Dr. Harris disagreed with Dr. Matthew's finding of 15 percent permanent impairment based upon routine use of an ankle/foot orthosis, noting that Table 16-6 was used for functional history adjustments rather than for diagnosis-based impairment (DBI) calculations. He also noted that there was no documentation that appellant required routine use of an ankle/foot orthosis. Using the DBI method, the DMA found that, under the sixth edition of the A.M.A., *Guides*, Table 16-2, page 501, she had a Class 1, grade E impairment or two percent permanent impairment of the left lower extremity for plantar fasciitis. The DMA concluded that appellant had reached MMI as of Dr. Matthews' examination of June 30, 2020.

OWCP prepared a SOAF on June 24, 2021 which listed the accepted conditions as contusion of left foot, and localized swelling, mass, and lump of the left lower limb.

On June 28, 2021 OWCP referred appellant to Dr. Shahin Sheibani-Rad, a Board-certified orthopedic surgeon, along with the medical record and SOAF, for evaluation of her permanent impairment, date of MMI, and medical status.

On September 2, 2021 Dr. Sheibani-Rad reviewed the medical record and SOAF and conducted a physical examination. On examination of appellant's left foot, he noted pain, but found that her ankle was stable and neurovascularly intact. Dr. Sheibani-Rad also measured her range of motion and found 20 degrees of dorsiflexion, 50 degrees of plantar flexion, and 25 degrees of inversion and eversion. He diagnosed left foot contusion and found no permanent impairment under the sixth edition of the A.M.A., *Guides*. Dr. Sheibani-Rad opined that appellant reached MMI as of September 2, 2021.

On October 24, 2021 OWCP requested clarification from Dr. Harris and submission of an addendum report addressing Dr. Sheibani-Rad's September 2, 2021 second opinion report.

In an addendum report dated October 25, 2021, Dr. Harris reviewed Dr. Sheibani-Rad's September 2, 2021 report and noted that OWCP had accepted as employment related a left foot contusion and left lower limb soft tissue mass. He found that ROM was not permitted as an alternative impairment rating for the applicable CDX for the diagnosed condition and noted that Dr. Sheibani-Rad's examination demonstrated satisfactory left ankle motion without significant abnormalities. Dr. Harris further determined that Dr. Sheibani-Rad found zero percent left lower extremity impairment, without explaining his impairment calculation. He concurred with Dr. Sheibani-Rad's finding of no permanent impairment of the left lower extremity and opined that appellant had reached MMI as of September 2, 2021.

By decision dated January 18, 2022, OWCP denied appellant's schedule award claim, finding that she had not established permanent impairment of a scheduled member or function of the body in accordance with the A.M.A., *Guides*. It found that the weight of the medical evidence

rested with the October 25, 2021 report of Dr. Harris, who determined that appellant had no permanent impairment of her left lower extremity.

LEGAL PRECEDENT

The schedule award provisions of FECA⁵ and its implementing regulations⁶ 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. The method used in making a such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁷ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.⁸

It is the claimant's burden of proof to establish permanent impairment of the scheduled member or function of the body as a result of an employment injury.⁹ OWCP's procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.¹⁰

In addressing lower extremity impairment, the sixth edition requires identification of the impairment CDX, which is then adjusted by a GMFH), a grade modifier for physical examination (GMPE), and a grade modifier for clinical studies (GMCS).¹¹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹²

⁵ *Supra* note 1.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.*; see also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁹ *E.D.*, Docket No. 19-1562 (issued March 3, 2020); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹⁰ *Supra* note 8 at Chapter 2.808.5.

¹¹ A.M.A., *Guides* 383-492.

¹² *Id.* at 497.

In some instances, a DMA's opinion can constitute the weight of the medical evidence.¹³ This occurs in schedule award cases where an opinion on the percentage of permanent impairment and a description of physical findings is on file from an examining physician, but the percentage estimate by this physician is not based on the A.M.A., *Guides*.¹⁴ In this instance, a detailed opinion by a DMA may constitute the weight of the medical evidence as long as he or she explains his or her opinion, shows values and computation of impairment based on the A.M.A., *Guides*, and considers each of the reported findings of impairment.¹⁵

ANALYSIS

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

OWCP referred appellant to Dr. Sheibani-Rad for a second opinion evaluation. In his September 2, 2021 report, Dr. Sheibani-Rad diagnosed left foot contusion and found no permanent impairment under the sixth edition of the A.M.A., *Guides*. He opined that appellant reached MMI as of September 2, 2021. While he noted appellant's left foot contusion, Dr. Sheibani-Rad did not acknowledge appellant's accepted swelling/mass/lump of the left lower limb which was noted in the provided SOAF.

Dr. Sheibani-Rad did not accept the facts as presented in the SOAF in rendering his medical opinion as he focused only on one of the two accepted employment conditions. OWCP's procedures and Board precedent dictate that when an OWCP DMA, second opinion specialist, or impartial medical examiner renders a medical opinion based on a SOAF which is in complete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹⁶

It is well established that proceedings under FECA are not adversarial in nature, and while the employee has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁷ Once OWCP undertook development of the evidence, it had an obligation to do a complete job and obtain a proper evaluation and a report that would resolve the issue in this case.¹⁸

¹³ *M.G.*, Docket No. 20-0078 (issued December 22, 2020); *R.R.*, Docket No. 19-1314 (issued January 3, 2020); *J.H.*, Docket No. 18-1207 (issued June 20, 2019); *M.P.*, Docket No. 14-1602 (issued January 13, 2015); *supra* note 8 at Chapter 2.810.8j (September 2010).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See N.P.*, Docket No. 19-0296 (issued July 25, 2019); *M.D.*, Docket No. 18-0468 (issued September 4, 2018).

¹⁷ *See W.W.*, Docket No. 18-0093 (issued October 9, 2018); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁸ *See 5 U.S.C. § 8101(19)*; *P.T.*, Docket No. 21-0138 (issued June 14, 2021); *J.K.*, Docket Nos. 19-1420 & 19-1422 (issued August 12, 2020); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

The Board will therefore set aside OWCP's January 18, 2022 decision and remand the case to Dr. Sheibani-Rad for a supplemental opinion and an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*. Following this and any other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: September 14, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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