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F.R., Appellant)	
)	
and)	Docket No. 23-1114
)	Issued: March 18, 2024
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Carol Stream, IL, Employer)	
)	

Case Submitted on the Record

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

On August 24, 2023 appellant filed a timely appeal from an April 14, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

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

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 20, 2015 appellant, then a 47-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral plantar fasciitis, peroneal tendinitis, and tenosynovitis as a result of factors of his federal employment including walking and standing. He first became aware of the conditions on September 9, 2015 and of their relationship to his federal employment on October 1, 2015. Appellant stopped work on January 12, 2016. OWCP accepted the claim for bilateral plantar fasciitis, bilateral peroneal tendinitis in its insertion into the fifth metatarsal base, and bilateral diffuse nonspecific tenosynovitis.³ It paid wage-loss compensation on the supplemental rolls commencing January 12, 2016 for intermittent periods of total disability.

In a December 8, 2022 report, Dr. Neil Allen, a Board-certified neurologist, examined appellant to determine his percentage of permanent impairment and date of maximum medical improvement (MMI). He reviewed the history of injury and the medical record, including October 4, 2015 magnetic resonance imaging (MRI) scans. Appellant's left ankle MRI scan demonstrated mild tendinosis of the Achilles tendon, while his right ankle MRI scan demonstrated tenosynovitis of the flexor hallucis longus tendon and distal Achilles tendon and low-grade tear involving the peroneus longus tendon. On physical examination of appellant's right ankle and foot, Dr. Allen found 15, 12, and 5 degrees of dorsiflexion, 59, 60, and 60 degrees of plantar flexion, 34, 32, and 30 degrees of inversion, and 17, 15, and 14 degrees of eversion. He observed left ankle and foot range of motion (ROM) of 19, 16, and 13 degrees of dorsiflexion, 60, 64, and 69 degrees of plantar flexion, 37, 35, 35 degrees of inversion, and 15, 17, and 18 degrees of eversion. Dr. Allen related tenderness of the lateral malleolus bilaterally and antalgic gait. He diagnosed bilateral plantar fascial fibromatosis, bilateral peroneal tendinitis, and bilateral synovitis and tenosynovitis of the ankles and feet. Referring to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),⁴ under Table 16-2, page 501, Dr. Allen identified bilateral ankle strain/sprain as the class of diagnosis (CDX) upon which the rating was based. He noted that this corresponded to a Class 1 impairment for palpatory and radiographic findings, with a default value of one percent. Dr. Allen assigned a grade modifier for functional history (GMFH) of 1 for the antalgic gait and excluded consideration of a grade modifier for physical examination (GMPE) and a grade modifier for clinical studies (GMCS) as these were used in class placement. With this net adjustment, he determined that appellant had one percent impairment of each lower extremity.

³ OWCP assigned the claim OWCP File No. xxxxxx738. Appellant filed an occupational disease claim on February 19, 2022 for bilateral knee conditions to which OWCP assigned OWCP File No. xxxxxx021. OWCP accepted this claim for bilateral primary knee osteoarthritis and bilateral medial meniscal tears. Appellant filed a second occupational disease claim of even date for bilateral shoulder conditions and OWCP assigned OWCP File No. xxxxxx025 accepting the claim for bilateral shoulder impingement syndromes, bilateral bicipital tendinitis, and complete rotator cuff tear of the right shoulder. On October 30, 2022 appellant filed a traumatic injury claim (Form CA-1) for an October 26, 2022 neck injury. OWCP assigned this claim OWCP File No. xxxxxx769 and accepted the claim for cervical disc disorder with radiculopathy. On January 10, 2023 OWCP administratively combined OWCP File Nos. xxxxxx738, xxxxxx769, xxxxxx025, and xxxxxx021 with the current file, OWCP File No. xxxxxx738, designated as the master file.

⁴ A.M.A. *Guides* (6th ed. 2009).

On January 4, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On January 9, 2023 OWCP referred the record, including a statement of accepted facts, to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA). In a report dated January 11, 2023, Dr. Harris reviewed the medical record, including the December 8, 2022 report of Dr. Allen and the October 4, 2015 MRI scans. He noted that physical examination of the ankles revealed satisfactory motion and ankle tenderness with abnormal gait mechanics. Dr. Harris found that the ROM impairment rating method was not used as the DBI rating method was appropriate. He identified bilateral ankle strains/sprains as the CDX upon which the rating was based. Using Table 16-2, page 501 of the A.M.A., *Guides*, Dr. Harris noted a Class 1 impairment with a default value of 1 percent due to tendon tear and spraining injury. He found that the date of MMI was December 8, 2022, which was the date of the examination by Dr. Allen.

By decision dated April 14, 2023, OWCP granted appellant a schedule award for one percent permanent impairment of the left lower extremity and one percent permanent impairment of the right lower extremity. The period of the award ran for 5.76 weeks from December 8, 2022 through January 17, 2023.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁵ and its implementing federal 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. 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 2009.⁷

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*.⁸ Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by GMFH, GMPE, and GMCS.⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰ The standards for

⁵ *Supra* note 2.

⁶ 20 C.F.R. § 10.404.

⁷ For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

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

⁹ *Id.* at 494-531.

¹⁰ *Id.* at 521.

evaluation of permanent impairment of an extremity under the A.M.A., *Guides* are based on all factors that prevent a limb from functioning normally, such as pain, sensory deficit, and loss of strength.¹¹

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*.¹²

ANALYSIS

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

In his report dated April 23, 2021, Dr. Allen, referencing Table 16-2, page 501 of the A.M.A., *Guides*, used bilateral ankle strain/sprain as the diagnosis upon which the rating was based. He noted that this corresponded to a Class 1 impairment with a default value of one percent. Dr. Allen assigned a GMFH of one for antalgic gait. With this adjustment he found that appellant had one percent permanent impairment of the bilateral lower extremities. On January 11, 2023 Dr. Harris reviewed the medical record, including the April 23, 2021, report of Dr. Allen. He agreed with Dr. Allen's findings and impairment rating of one percent permanent impairment of each lower extremity due to bilateral ankle sprain/strains. Dr. Harris determined that the date of MMI was December 8, 2022, the date of the examination by Dr. Allen.

The Board finds that Dr. Allen and the DMA, Dr. Harris, adequately explained how they arrived at appellant's rating of permanent impairment by listing specific tables and pages in the A.M.A., *Guides*. The Board also finds that both physicians properly interpreted and applied the standards of the sixth edition of the A.M.A., *Guides* to conclude that appellant had one percent permanent impairment of the bilateral lower extremities. The opinions of Dr. Allen and the DMA therefore represent the weight of the medical evidence and support that appellant has no greater than one percent permanent impairment of the right and left lower extremities.¹³

¹¹ *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *E.B.*, Docket No. 10-0670 (issued October 5, 2010); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹² *A.C.*, Docket No. 19-1333 (issued January 8, 2020); *B.B.*, Docket No. 18-0782 (issued January 11, 2019); *supra* note 7 at Chapter 2.808.6f (March 2017).

¹³ *R.W.*, Docket No. 23-0388 (issued August 15, 2023); *A.N.*, Docket No. 22-0999 (issued August 4, 2023); *L.D.*, Docket No. 22-0927 (issued July 3, 2023).

As appellant has not established greater than one percent permanent impairment of each lower extremity, for which he previously received a schedule award, the Board finds that he has not met his burden of proof.¹⁴

Appellant may request a schedule award or increased schedule award at any time based on evidence of 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 his left lower extremity and greater than one percent permanent impairment of his right lower extremity for which he has previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 18, 2024
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

¹⁴ On appeal appellant asserts that he is entitled to a schedule award for two percent permanent impairment of his lower extremities; however, OWCP awarded him one percent permanent impairment of each lower extremity, for a total of two percent bilateral lower extremity impairment. Section 8107 of FECA provides for 288 weeks of compensation for 100 percent permanent impairment of a lower extremity. Two percent of 288 weeks equals 5.76 weeks, the amount awarded.