

³ The Board notes that following the September 21, 2023 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.*

ISSUE

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

FACTUAL HISTORY

On August 20, 2021 appellant, then a 41-year-old sheet metal mechanic, filed a traumatic injury claim (Form CA-1) alleging that on August 18, 2021 he fractured his left foot when his toolbox hit and landed on his foot while in the performance of duty. He stopped work on August 19, 2021 and underwent a left foot open reduction and internal fixation of navicular fracture on August 27, 2021. Appellant returned to full-time modified duty with restrictions on October 13, 2021. On December 22, 2021 OWCP accepted the claim for displaced fracture of navicular (scaphoid) of left foot. It paid appellant wage-loss compensation on the supplemental rolls from December 7 to 16, 2021.

On May 6, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In May 17, 2022 letter, OWCP notified appellant's physician Dr. Derek West, a Board-certified orthopedic surgeon, of the requirements for a final rating under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴

OWCP thereafter received a November 19, 2021 report from Dr. West who noted that appellant was seen in follow up of his August 27, 2021 left open reduction internal fixation (ORIF) of the navicular bone. Dr. West related that an x-ray of appellant's left foot showed status post ORIF with excellent position and alignment.

By decision dated July 15, 2022, OWCP denied appellant's schedule award claim as the evidence was insufficient to establish a permanent impairment to a scheduled member or function of the body due to the August 18, 2021 accepted employment injury.

On July 25, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a July 11, 2022 report, Dr. M. Stephen Wilson, a Board-certified orthopedic surgeon and physiatrist, noted the history of appellant's August 18, 2021 employment injury and his medical course. Physical examination of the left foot/ankle revealed a normal range of motion with tenderness to palpation over the medial malleolus and plantar fascia with a tight medial plantar fascial band. Hypoesthesia over the distal pole of the navicular was noted with a well-healed surgical scar over the lateral aspect with a palpable screw. Dr. Wilson indicated that appellant was at maximum medical impairment (MMI). He opined that appellant had no lower extremity impairment under the range of motion (ROM) methodology as he had normal motion, but had six percent left lower extremity permanent impairment of the left foot/ankle under the diagnosis-based impairment (DBI) methodology for rating permanent impairment, for the diagnosis of displaced

⁴ A.M.A., *Guides* (6th ed. 2009).

navicular fracture. Under Table 16-2 of the A.M.A., *Guides*, Dr. Wilson found that appellant had a Class 1 impairment, grade D or six percent permanent impairment for the class of diagnosis (CDX) of displaced navicular fracture. He noted grade modifier adjustments and explained his impairment calculation. Dr. Wilson related that the CDX displaced navicular fracture was a Class 1 impairment with a default value of five percent. Appellant had a grade modifier for functional history (GMFH) of 2 under Table 16-6, a grade modifier for physical examination (GMPE) of 1 under Table 16-7 and noted that the grade modifier for clinical studies (GMCS) was not applicable, per Table 16-8, as it “was used to determine the class.” He then applied the net adjustment formula to find that appellant had six percent permanent impairment of the left lower extremity.

In an October 17, 2022 letter, Dr. Wilson requested that the acceptance of appellant’s claim be expanded to include additional conditions of hyperesthesia of the left lower extremity and aggravation of lumbar disc degeneration with radiculopathy due to prolonged altered gait.

On November 17, 2022 appellant filed another Form CA-7 for a schedule award.

Following a preliminary review, by decision dated November 21, 2022, an OWCP hearing representative found the case not in posture as Dr. Wilson’s July 11, 2022 report required further development regarding the schedule award issue. The hearing representative directed OWCP to prepare a statement of accepted facts (SOAF) and refer the case record, including Dr. Wilson’s permanent impairment report, to an OWCP District Medical Adviser (DMA).

On December 7, 2022 OWCP referred Dr. Wilson’s report and a SOAF to Dr. Morley Slutsky, Board-certified in occupational medicine serving as the DMA, for review and calculation of appellant’s permanent impairment.

In a December 16, 2022 report, Dr. Slutsky, the DMA, reviewed Dr. Wilson’s July 11, 2022 impairment report and opined that appellant reached MMI on July 11, 2022, the date of Dr. Wilson’s examination. He opined that appellant had three percent permanent impairment for a navicular fracture, nondisplaced with normal motion in the left foot region. Dr. Slutsky noted that appellant’s recent April 5, 2022 x-rays demonstrated excellent position, alignment, and healing; thus, there was no displacement. Under the DBI methodology, he rated the left foot for a CDX of navicular fracture without displacement and normal motion as a Class 1 impairment with a default value of three percent. Under Table 16-6 he found that appellant had a GMFH of 1; under Table 16-7 he found appellant had a GMPE of 1; and he further found that the GMCS was not applicable under Table 16-8 as it was used to determine “the correct diagnostic class” or CDX. Dr. Slutsky calculated, under the net adjustment formula, a net adjustment of 0, for a grade C, three percent permanent impairment of the left lower extremity.

By decision dated February 21, 2023, OWCP granted appellant a schedule award for three percent permanent impairment of the left lower extremity. The award ran for 8.64 weeks from July 11 to September 9, 2022. The weight of the medical evidence regarding the percentage of impairment was given to the DMA.

On February 28, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review, which took place on August 10, 2023.

By decision dated September 21, 2023, OWCP’s hearing representative affirmed OWCP’s February 21, 2023 schedule award decision.

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. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.

Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁷ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁸ 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.⁹

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 ankle, the relevant portion of the leg for the present case, reference is made to Table 16-2 (Foot and Ankle Regional Grid) beginning on page 501.¹⁰ After the CDX is determined from the Foot and Ankle Regional Grid (including identification of a default grade value), the net adjustment formula is applied utilizing GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹¹ Under Chapter 2.3, evaluators are directed to provide reasons for their impairment choices, including choices of diagnoses from regional grids and calculations of modifier scores.¹²

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.¹³

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁸ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

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

¹⁰ See A.M.A., *Guides* 501-08 (6th ed. 2009).

¹¹ *Id.* at 515-22.

¹² *Id.* at 23-28.

¹³ See *supra* note 11 at Chapter 2.808.6(f) (March 2017). See also *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

ANALYSIS

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

In a July 11, 2022 impairment report, Dr. Wilson indicated that appellant had reached MMI due to his condition. Utilizing Table 16-2,¹⁴ he determined that appellant had six percent permanent impairment for displaced navicular fracture. Dr. Wilson explained all his calculations as well as the grade modifier adjustments used to calculate the impairment rating. He indicated that appellant did not have a lower extremity impairment under the ROM methodology as he had normal motion.

In accordance with its procedures, OWCP properly referred the medical record to Dr. Slutsky, a DMA, who reviewed the clinical findings of Dr. Wilson on December 16, 2022 and concluded that appellant had three percent permanent impairment of the left lower extremity due to a navicular fracture, nondisplaced, with normal motion in the left foot region. The DMA related that as Dr. Wilson reported normal range of motion and the x-rays demonstrated excellent position, alignment, and healing, there was no displacement. Dr. Slutsky also determined that appellant had reached MMI on July 11, 2022. Regarding impairment due to navicular fracture without displacement and normal motion, Dr. Slutsky utilized Table 16-2 and determined that appellant had a Class 1 impairment, with a default value of three percent. The DMA assigned a GMFH of 1 and a GMPE of 1, noting that GMCS was not applicable. He applied the net adjustment formula (GMFH - CDX) (1-1) + (GMPE - CDX) (1-1) and properly found that a net adjustment of 0 resulted in a final three percent permanent impairment. The DMA further related that the ROM rating method was not applicable as appellant had normal ROM of the foot. He, therefore, advised that appellant had a Class 1 impairment with a default value of three percent for the CDX of nondisplaced navicular fracture.

The Board finds that the three percent left lower extremity impairment rating for nondisplaced navicular fracture from the DMA, Dr. Harris, represents the weight of the medical evidence in this case, as he properly applied the appropriate provisions of the A.M.A., *Guides* to the clinical findings of record.¹⁵ There is no evidence establishing greater impairment in conformance with the A.M.A., *Guides*.

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.

¹⁴ *Supra* note 10 at 501, Table 16-2.

¹⁵ *K.K.*, Docket No. 21-0712 (issued January 10, 2022); *K.M.*, Docket No. 19-1526 (issued January 22, 2020); *G.S.*, Docket No. 19-0277 (issued August 22, 2019); *J.H.*, Docket No. 18-1207 (issued June 20, 2019).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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