

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

M.C., Appellant)	
)	
and)	
)	
DEPARTMENT OF HOMELAND SECURITY,)	Docket No. 25-0438
U.S. CUSTOMS AND BORDER PROTECTION,)	Issued: April 22, 2025
BORDER PATROL, Rio Grande City, 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 March 30, 2025, appellant filed a timely appeal from a February 6, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees'

¹ Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.2(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of his oral argument request, appellant contended that OWCP did not provide him with sufficient time to obtain a permanent impairment rating from his physician. The Board in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record and the case turns on the adjudication of the medical evidence. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUE

The issue is whether appellant has met his burden of proof to establish permanent impairment of a scheduled member or function of the body warranting a schedule award.

FACTUAL HISTORY

On June 14, 2023, appellant, then a 33-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that he injured his right Achilles tendon lifting 445 pounds and doing sprints while in the performance of duty. He stopped work on that date. OWCP accepted the claim for right Achilles tendon rupture.

On July 31, 2023, appellant returned to light-duty work. On October 18, 2023, Dr. Daniel Romanelli, a Board-certified orthopedic surgeon, completed a duty status report (Form CA-17) indicating that appellant could return to full duty. He also provided a treatment note of even date relating that appellant's surgical incisions were well-healed with no swelling or bruising and full sensation over the lateral aspect of the right foot. Dr. Romanelli found full range of motion of the ankle, but a mild antalgic gait. He diagnosed status post right Achilles percutaneous repair. Dr. Romanelli recommended additional physical therapy. Appellant returned to full-duty work on October 18, 2023.

On December 6, 2024, appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a December 13, 2024 development letter, OWCP requested that appellant submit an impairment evaluation addressing whether he had reached maximum medical improvement (MMI) and provide an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ It afforded him 30 days to submit additional medical evidence in support of his schedule award claim.

On December 19, 2024, appellant requested an extension of time for submission of documents as he was unable to secure an appointment with a physician until January 31, 2025 due to the holidays. No further medical evidence was received.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the February 26, 2025 decision, OWCP received additional evidence. 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.*

⁴ A.M.A., *Guides* (6th ed 2009).

By decision dated February 6, 2025, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

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. 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.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.⁸

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's *International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement*.⁹ Under the sixth edition, for lower extremity impairments, the evaluator identifies the impairment of the class of diagnosis (CDX), which is then adjusted by a grade modifier for functional history (GMFH), grade modifier for physical examination (GMPE), and/or grade modifier for clinical studies (GMCS).¹⁰ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹¹

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's district medical adviser (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.¹²

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at § 10.404(a); *see also T.T.*, Docket No. 24-0079 (issued April 1, 2024); *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); *id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁹ A.M.A., *Guides*, page 3, section 1.3.

¹⁰ *Id.* at 493-556.

¹¹ *Id.* at 521.

¹² *See supra* note 8 at Chapter 2.808.6f (March 2017); *see also J.T.*, Docket No. 17-1465 (issued September 25, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

OWCP accepted the claim for a right Achilles tendon tear and surgical repair. In a report dated October 18, 2023, Dr. Romanelli documented the surgical procedure and postoperative treatment appellant received due the accepted right Achilles tear. However, he did not relate that appellant had reached MMI or that he had permanent impairment in his right lower extremity in accordance with the A.M.A., *Guides*. Therefore, Dr. Romanelli's opinions are insufficient to establish appellant's schedule award claim.¹³

On December 13, 2024, OWCP requested that appellant submit a permanent impairment evaluation from his physician addressing the date of MMI and extent of any employment-related permanent impairment using the A.M.A., *Guides*. Appellant, however, did not submit such medical evidence.

As noted above, appellant must submit an evaluation from a physician that supports a finding that he has reached MMI, and which includes a description of impairment in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹⁴

As the medical evidence of record is insufficient to establish permanent impairment of a scheduled member or function of the body, the Board finds that appellant has not met his burden of proof.¹⁵

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 his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

¹³ See *M.H.*, Docket No. 24-0872 (issued October 29, 2024); *P.M.*, Docket No. 24-0057 (issued April 15, 2024).

¹⁴ *N.A.*, Docket No. 23-0532 (issued January 24, 2024); *C.T.*, Docket No. 22-0128 (issued February 15, 2023); see *J.P.*, Docket No. 21-0801 (issued December 22, 2021); *D.J.*, Docket No. 20-0017 (issued August 31, 2021); *B.V.*, Docket No. 17-0656 (issued March 13, 2018); *C.B.*, Docket No. 16-0060 (issued February 2, 2016); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

¹⁵ See *L.L.*, Docket No. 24-0517 (issued June 18, 2024).

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2025
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