

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

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A.M., Appellant )  
and )  
U.S. POSTAL SERVICE, HOUSTON-NORTH ) Docket No. 25-0579  
SHEPHERD POST OFFICE, Houston, TX, ) Issued: July 11, 2025  
Employer )  
\_\_\_\_\_  
)

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On May 23, 2025 appellant filed a timely appeal from January 17, 2025 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP properly determined appellant's date of maximum medical improvement (MMI) as June 28, 2024 for schedule award purposes; and (2) whether OWCP properly terminated appellant's compensation, effective June 13, 2024, finding that she forfeited her entitlement to compensation, pursuant to 5 U.S.C. § 8148(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On October 10, 2017 appellant, then a 27-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 4, 2017 she sustained left foot injuries when a pallet jack dropped down on her foot while in the performance of duty. She stopped work on the date of injury. OWCP accepted the claim for left foot contusion and left foot sprain. It subsequently expanded the acceptance of the claim to include complex regional pain syndrome and lower left limb mononeuropathy. OWCP paid appellant wage-loss compensation on the supplemental rolls effective November 19, 2017. Appellant returned to limited duty on April 19, 2018, but stopped work again on November 7, 2020. OWCP paid appellant wage-loss compensation on the periodic rolls effective December 6, 2020.

In a report dated May 22, 2023, Dr. Ranil Ninala, a Board-certified physiatrist, opined that appellant's left foot condition reached MMI on May 1, 2023 as he found her condition was static and no further functional impairment was anticipated. Using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>2</sup> he calculated two percent permanent impairment of the left foot for a strain/contusion with mild motion deficit.

On December 11, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On May 30, 2024 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and series of questions, to Dr. Thomas M. DeBerardino, a Board-certified orthopedic surgeon, for second opinion evaluation, including an assessment of her work-related condition and any resulting permanent impairment.

In a report dated June 28, 2024, Dr. DeBerardino concluded that appellant had five percent left lower extremity permanent impairment using the sixth edition of the A.M.A., *Guides*. He noted that she reached MMI as of the date of his permanent impairment evaluation.

On July 24, 2024 OWCP referred appellant's case to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA). It requested that he review the medical evidence of record, including Dr. DeBerardino's June 28, 2024 report, and provide an opinion regarding appellant's permanent impairment of her left lower extremity under the sixth edition of the A.M.A., *Guides*.

In a July 28, 2024 report, Dr. Harris opined that Dr. DeBerardino's determination that appellant had five percent permanent impairment of the left lower extremity was supported by the records reviewed and was consistent with the methodology set forth by the A.M.A., *Guides*. He found that the date of MMI was June 28, 2024, the date of Dr. DeBerardino's examination.

By decision dated September 10, 2024, OWCP granted appellant a schedule award for five percent permanent impairment of the left lower extremity (leg). It determined that June 28, 2024

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

was the date of MMI based on the report from Dr. DeBerardino. The period of the award ran for 14.4 weeks, from June 28 through October 6, 2024.

On October 11, 2024 appellant requested review of the written record by a representative of OWCP's Branch of Hearings and Review. In a letter of even date, she advised that she was disputing the finding that she had reached MMI for her schedule award on June 28, 2024. Appellant contended that her treating physician had reported that her actual date of MMI was May 22, 2023.

On January 16, 2025 OWCP received documents concerning appellant's plea of guilty to one count of violating 18 U.S.C. § 1920 for the commission of fraud in the receipt of federal workers' compensation under FECA. Included was a court record establishing a waiver of indictment by appellant, entered on March 21, 2024. Also included was the plea agreement, signed by appellant, her then-counsel, the Assistant United States Attorney, and the Deputy United States District Clerk, on June 13, 2024. The case record establishes that the plea agreement was accepted by the U.S. District Court, Southern District of Texas on June 13, 2024.

By decision dated January 17, 2025, OWCP terminated appellant's compensation benefits, effective June 13, 2024, finding that she forfeited her entitlement to compensation, pursuant to 5 U.S.C. § 8148(a).

By separate decision also dated January 17, 2025, OWCP's hearing representative affirmed the September 10, 2024 schedule award decision.

### **LEGAL PRECEDENT -- ISSUE 1**

It is well established that the period covered by a schedule award commences on the date that the employee reaches MMI from the residuals of the employment injury. The Board has defined MMI as meaning that the physical condition of the injured member of the body has stabilized and will not improve further. The question of when MMI has been reached is a factual one that depends upon the medical findings in the record. The determination of such date is to be made in each case upon the basis of the medical evidence in that case.<sup>3</sup> The date of MMI is usually considered to be the date of the medical examination that determined the extent of the impairment.

The Board has also noted a reluctance to find a date of MMI, which is retroactive to the award, as retroactive awards often result in payment of less compensation benefits. The Board, therefore, requires persuasive proof of MMI in the selection of a retroactive date of MMI.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined appellant's date of MMI as June 28, 2024 for schedule award purposes.

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<sup>3</sup> *J.P.*, Docket No. 19-0501 (issued October 18, 2019); *C.R.*, Docket No. 17-1872 (issued March 8, 2018); *Peter C. Belkind*, 56 ECAB 580 (2005); *Marie J. Born*, 7 ECAB 623 (1976).

<sup>4</sup> *R.M.*, Docket No. 18-1313 (issued April 11, 2019); *J.H.*, Docket No. 14-1584 (issued October 5, 2016).

Appellant has not contested the percentage of permanent impairment of her schedule award. Rather, she contests the date the schedule award began. The Board will therefore review whether OWCP properly identified the date of MMI.

In a report dated May 22, 2023, appellant's treating physician, Dr. Ninala, related that appellant had two percent permanent impairment of her left foot and that her date of MMI was May 1, 2023.

On May 30, 2024 OWCP referred appellant to Dr. DeBerardino for a second opinion evaluation and assessment of her permanent impairment. In a report dated June 28, 2024, Dr. DeBerardino concluded that appellant had five percent left lower extremity permanent impairment using the sixth edition of the A.M.A., *Guides*. In a July 28, 2024 report, OWCP's DMA, Dr. Harris, reviewed the record and opined that Dr. DeBerardino's determination that appellant had five percent permanent impairment of the left lower extremity was supported by the records reviewed and was consistent with the methodology set forth by the A.M.A., *Guides*.

As the Board noted, the date of MMI is usually considered to be the date of the medical examination that determined the extent of the impairment.<sup>5</sup> OWCP referred appellant for a second opinion evaluation with Dr. DeBerardino to determine the nature and extent of appellant's impairment using the sixth edition of the A.M.A., *Guides*. Dr. DeBerardino sufficiently explained appellant's physical examination findings and diagnoses to allow OWCP's DMA, Dr. Harris, to calculate that appellant had five percent permanent impairment of the left lower extremity. Dr. Harris found that appellant had reached MMI on June 28, 2024, the date of Dr. DeBerardino's examination.

MMI means that the physical condition of the injured member of the body has stabilized and will not improve further. This date, which is determined through evaluation of the medical evidence, is usually considered to be the date of the evaluation accepted as definitive by OWCP.<sup>6</sup> June 28, 2024 was the date that Dr. DeBerardino conducted a comprehensive evaluation of appellant's left lower extremity conditions and determined that she had five percent permanent impairment of the left lower extremity. This evaluation, not that of Dr. Ninala, was the basis of appellant's schedule award.

The Board therefore finds that OWCP properly identified the date of MMI as June 28, 2024.

#### **LEGAL PRECEDENT -- ISSUE 2**

Public Law No. 103-333, enacted on September 30, 1994, amended FECA by adding 5 U.S.C. § 8148, which provides for the termination of benefits payable to beneficiaries who have been convicted of defrauding the FECA program. Section 8148(a) specifically provides that an individual convicted of a violation of 18 U.S.C. § 1920 or any other federal or state criminal statute relating to fraud in the application for or receipt of a benefit under FECA, shall forfeit as of the

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<sup>5</sup> *J.D.*, Docket No. 19-0032 (issued June 10, 2021); *R.M.*, *id.*; *C.H.*, Docket No. 19-1639 (issued April 3, 2020).

<sup>6</sup> *J.D.*, *id.*; *C.R.*, Docket No. 17-1872 (issued March 8, 2018).

date of such conviction, entitlement to any benefit to which such individual would otherwise be entitled under FECA for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any action the Secretary may take under section 8106<sup>7</sup> (forfeiture) or section 8129<sup>8</sup> (recovery of overpayments) of FECA.<sup>9</sup>

OWCP's procedures provide that in support of termination or suspension of compensation the record must contain evidence establishing that the person convicted of fraud and the conviction was related to the claim for, or receipt of, benefits under FECA.<sup>10</sup> Such evidence includes a copy of the indictment or formal accusation that the person has committed the crime and a copy of the plea agreement with an indication that it was accepted by the court, or a copy of the guilty verdict.<sup>11</sup> The termination is effective on the date of the verdict or on the date the guilty plea is accepted and guilt adjudicated.<sup>12</sup> Because of the criminal basis for the termination, no pretermination notice is required before a final decision is issued.<sup>13</sup>

## **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly terminated appellant's compensation, effective June 13, 2024, finding that she forfeited her entitlement to compensation, pursuant to 5 U.S.C. § 8148(a).

On January 16, 2025 OWCP received documents concerning appellant's plea of guilty to one count of violating 18 U.S.C. § 1920 for the commission of fraud in the receipt of federal workers' compensation under FECA. Included was a court record establishing a waiver of indictment by appellant, entered on March 21, 2024. Also included was the plea agreement, signed by appellant, her then-counsel, the Assistant United States Attorney, and the Deputy United States District Clerk, on June 13, 2024. The case record establishes that the plea agreement was accepted by the U.S. District Court, Southern District of Texas on June 13, 2024.

As noted, under section 8148(a) of FECA, a claimant who is convicted of fraud in obtaining compensation benefits under 18 U.S.C. § 1920, or any other federal or state criminal statute relating to fraud in the application for or receipt of a benefit under FECA, shall forfeit as of the date of

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<sup>7</sup> *Id.* at § 8106.

<sup>8</sup> *Id.* at § 8129.

<sup>9</sup> *Id.* at § 8148; see A.C., Docket Nos. 22-1256 and 22-259 (issued January 10, 2024); F.C., 59 ECAB 666 (2007).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.17c(2) (September 2020).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at Chapter 2.1400.17(d) (February 2013).

<sup>13</sup> *Id.*

such conviction, entitlement to any benefit to which such individual would otherwise be entitled under FECA for any injury occurring on or before the date of such conviction.<sup>14</sup>

The case record contains documentation from the U.S. District Court, Southern District of Texas, of appellant's waiver of indictment and the plea agreement. The Board therefore finds that appellant was convicted of making false statements regarding FECA compensation benefits under 18 U.S.C. § 1920. As noted above, OWCP's procedures provide that termination is effective the date the guilty plea is accepted, and guilt adjudicated.<sup>15</sup> Accordingly, OWCP properly terminated appellant's compensation benefits, effective June 13, 2024, the date of her conviction.

### **CONCLUSION**

The Board finds that OWCP properly determined appellant's date of MMI as June 28, 2024 for schedule award purposes. The Board further finds that OWCP properly terminated appellant's compensation, effective June 13, 2024, finding that she forfeited her entitlement to compensation, pursuant to 5 U.S.C. § 8148(a).

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<sup>14</sup> 5 U.S.C. § 8148(a); 20 C.F.R. § 10.17; *K.V.*, Docket No. 19-1947 (issued May 28, 2020); *R.R.*, Docket No. 18-0804 (issued October 8, 2019); *R.M.*, Docket No. 17-0141 (issued March 28, 2018).

<sup>15</sup> *Supra* note 12. See also *A.C.*, *supra* note 9; *L.C.*, Docket No. 19-1094 (issued February 25, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 17, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 11, 2025  
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