United States Department of Labor
Employees' Compensation Appeals Board

K.P., Appellant	)	
and	)	**Docket No. 25-0278**
	)	**Issued: March 7, 2025**
DEPARTMENT OF VETERANS AFFAIRS, NATIONAL CEMETERY ADMINISTRATION, SAN FRANCISCO NATIONAL CEMETARY, San Francisco, CA, 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 January 29, 2025 appellant filed a timely appeal from a November 25, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the November 25, 2024 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*.

ISSUE

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

FACTUAL HISTORY

On May 8, 2019 appellant, then a 54-year-old program support assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 12, 2019 he injured his left ankle when it buckled when he was walking up a hill while carrying global positioning system (GPS) equipment while in the performance of duty. He stopped work on April 29, 2019.

On February 11, 2020 OWCP accepted the claim for sprain of ligament of left ankle.

On February 26, 2021 appellant underwent surgery to the left ankle by Dr. Daniel Thuillier, a Board-certified orthopedic surgeon, including left lateral ligament reconstruction and debridement/chondroplasty of osteochondral defects of the medial talar dome.

On May 31, 2024 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By letter dated June 4, 2024, OWCP advised appellant of the evidence necessary to establish an entitlement to a schedule award under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3]

In a June 27, 2024 medical report, Dr. Benjamin A. Brownell, a podiatrist, related that his most recent physical examination of appellant on September 13, 2023 revealed pain with range of motion (ROM) in the ankle joint, subtalar joint, and lateral ankle and hypermobility of the lateral ankle. He opined that appellant had reached maximum medical improvement (MMI) on September 13, 2023. Dr. Brownell also indicated that he was not able to perform an impairment rating evaluation under the sixth edition of the A.M.A., *Guides.*

On September 5, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Charles F. Xeller, a Board-certified orthopedic surgeon, for a second opinion examination and impairment rating evaluation.

In a report dated September 24, 2024, Dr. Xeller reviewed the SOAF and medical record and noted appellant's complaints of pain in the left lateral ligamentous complex of the left ankle. On physical examination of the lower extremities, he observed that the left ankle was stable but stiff and that he was unable to stand unsupported on his left leg due to pain. Dr. Xeller recorded ROM measurements of the left ankle of 40 degrees plantar flexion, 0 degrees dorsiflexion, 0 degrees inversion, and 5 degrees eversion. He indicated that ROM of the right ankle was normal. Dr. Xeller diagnosed status post repair of lateral left ankle ligaments and chondroplasty of talar osteochondral medial dome defect. He referred to the sixth edition of the A.M.A., *Guides*, Table

[3] A.M.A., *Guides* (6th ed 2009).

16-22 (Ankle Motion Impairment), page 549, and found that appellant had 14 percent left lower extremity impairment using the ROM impairment rating method.

On October 2, 2024 OWCP routed Dr. Xeller's September 24, 2024 report, along with the case record, and SOAF to Dr. Herbert White, Jr., a Board-certified occupational medicine specialist serving as an OWCP district medical adviser (DMA), for review and a determination of appellant's date of MMI and any permanent impairment of his left lower extremity under the sixth edition of the A.M.A., *Guides*.

On October 9, 2024 Dr. White applied the provisions of the A.M.A., *Guides* to Dr. Xeller's physical findings. He opined that appellant reached MMI on September 24, 2024, the date of Dr. Xeller's evaluation. Dr. White disagreed with Dr. Xeller's use of the ROM impairment rating method, noting that the sixth edition of the A.M.A., *Guides* only allowed for lower extremity standalone ROM-based impairment ratings in the setting of severe organic motion loss not ascribable to a specific diagnosis-based impairment (DBI), which was not applicable in this case. Utilizing the DBI methodology of the A.M.A., *Guides*,[4] Table 16-2 (Foot and Ankle Regional Grid), page 501, Dr. White found that appellant's class of diagnosis (CDX) resulted in a Class 1, grade C or five percent permanent impairment. He assigned a grade modifier for functional history (GMFH) of 2 for antalgic gait/use of a cane and stated that a grade modifier for physical examination (GMPE) and a grade modifier for clinical studies (GMCS) were not applicable as the physical examination and clinical studies were used to establish the diagnosis and proper placement in the regional grid. Dr. White utilized the net adjustment formula to find 1, which was equivalent to a grade D or six percent left lower extremity permanent impairment.

By decision dated October 22, 2024, OWCP granted appellant a schedule award for six percent permanent impairment of the left lower extremity (left leg). The award ran for 17.28 weeks from September 24, 2024 through January 22, 2025.

On November 18, 2024 appellant requested reconsideration of OWCP's October 22, 2024 decision. He submitted a statement dated November 14, 2024 and resubmitted a September 24, 2024 permanent impairment worksheet by Dr. Xeller.

By decision dated November 25, 2024, OWCP denied modification of its October 22, 2024 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA[5] and its implementing 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 of loss of a member shall be determined. OWCP has

[4] *Id*.

[5] *Supra* note 1.

[6] 20 C.F.R. § 10.404.

adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants. As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

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*.[8] Under the sixth edition, for lower extremity impairments, the evaluator identifies the impairment of the CDX, which is then adjusted by a GMFH, a GMPE, and/or a GMCS.[9] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10] Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[11]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and extent of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.[12]

ANALYSIS

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

In accordance with its procedures, OWCP properly referred appellant, along with a SOAF, the case record, and a series of questions to Dr. Xeller for a second opinion examination and permanent impairment evaluation. On September 24, 2024 he obtained ROM measurements in degrees for his ankles and calculated 14 percent permanent impairment of the left lower extremity under the ROM impairment rating method due to his left ankle condition.

On October 9, 2024 Dr. White, OWCP's DMA, reviewed the September 24, 2024 report from Dr. Xeller. He opined that MMI was reached on September 24, 2024, the date of Dr. Xeller's examination. Dr. White disagreed with Dr. Xeller's use of the ROM impairment rating method for evaluation of appellant's permanent impairment. He explained that the sixth edition of the A.M.A., *Guides*, only allowed for lower extremity standalone ROM-based impairment ratings in the setting of severe organic motion loss not ascribable to a specific DBI, which did not apply to the accepted conditions. Dr. White thereafter rated appellant's permanent impairment utilizing the

[7] 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 3.700.2 and Exhibit 1 (January 2010).

[8] A.M.A., *Guides*, page 3, section 1.3.

[9] *Id*. at 493-556.

[10] *Id*. at 521.

[11] *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

[12] *See supra* note 7 at Chapter 2.808.6f (March 2017).

DBI methodology. Referring to Table 16-2 of the A.M.A., *Guides*, he noted a Class 1, grade C or five percent permanent impairment. Dr. White assigned a GMFH of 2, a GMPE of 0, and a GMCS of 0 and found the net adjustment formula resulted in 1, or final grade D for six percent permanent impairment of the left lower extremity.

The Board finds that OWCP properly relied upon the opinion of Dr. White, serving as the DMA, as he appropriately applied the DBI methodology found in the sixth edition of the A.M.A., *Guides* in determining that appellant had six percent permanent impairment of the left lower extremity.[13]

As the medical evidence of record is insufficient to establish greater than the six percent permanent impairment for which he previously received a schedule award, the Board finds that appellant 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 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 greater than six percent permanent impairment of the left lower extremity, for which he previously received a schedule award.

[13] *See D.B.*, Docket No. 24-0168 (issued April 19, 2024).

[14] *See P.S.*, Docket No. 22-1051 (issued May 4, 2023); *M.H.*, Docket No. 20-1109 (issued September 27, 2021); *R.H.*, Docket No. 20-1472 (issued March 15, 2021); *L.D.*, Docket No. 19-0495 (issued February 5, 2020).

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 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