

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

M.B., Appellant

and

**U.S. POSTAL SERVICE, CLYMER POST
OFFICE, Clymer, PA, Employer**

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**Docket No. 25-0749
Issued: September 10, 2025**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

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 July 31, 2025 appellant, through counsel, filed a timely appeal from a June 25, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

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 January 3, 2018 appellant, then a 36-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 2, 2018 he injured his left ankle when he slipped on a step while in the performance of duty. He stopped work on the date of injury.

OWCP accepted the claim for left ankle ligament sprain, cellulitis of left lower limb, and infection following a procedure.

On March 9, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In an impairment rating evaluation report dated November 6, 2020, Dr. Sami E. Moufawad, a Board-certified physiatrist, discussed appellant's January 2, 2018 employment injury, documented physical examination findings, and referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ Using the range of motion (ROM) rating method, he found 20 percent permanent impairment of the left lower extremity for the left ankle.⁴

By decision dated April 14, 2022, OWCP expanded its acceptance of the claim to include primary osteoarthritis of the left ankle and foot (left subtalar joint arthritis).

On May 4, 2022 OWCP referred the case record, along with a statement of accepted facts (SOAF), to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), for review and an opinion on permanent impairment.

In a report dated May 7, 2022, Dr. Katz noted discrepancies in the physical examination findings of record. He recommended an updated second opinion evaluation.

On June 30, 2022 OWCP referred appellant, along with the case record and SOAF, to Dr. Mitchell E. Antin, an osteopath and Board-certified orthopedic surgeon, for a second opinion permanent impairment evaluation.

In a report dated August 30, 2022, Dr. Antin noted his review of the medical record and SOAF, and documented physical examination findings. He applied the sixth edition of the A.M.A., *Guides*, and opined that appellant had two percent permanent impairment of the left lower extremity due to an ankle ligament injury without instability.

³ A.M.A., *Guides* (6th ed. 2009).

⁴ Dr. Moufawad indicated that he utilized the ROM rating methodology because scarring of appellant's left ankle was not represented in the diagnosis-based impairment (DBI) rating methodology under the A.M.A., *Guides*.

In a report dated October 4, 2022, Dr. Katz, as the DMA, applied the sixth edition of the A.M.A., *Guides* to Dr. Antin's August 30, 2022 physical examination findings. He referenced Table 16-2, Foot/Ankle Regional Grid, page 501, and opined that appellant had six percent permanent impairment of the left lower extremity for sprain, tendinitis, or ruptured tendon of the left ankle with mild palpatory findings and no laxity. Dr. Katz also opined that the accepted conditions were not eligible for an alternative ROM impairment rating. He opined that appellant had reached maximum medical improvement (MMI) as of August 30, 2022, the date of Dr. Antin's permanent impairment evaluation.

In an addendum report dated November 6, 2022, Dr. Moufawad reviewed the August 30, 2022 report of Dr. Antin and the October 4, 2022 report of Dr. Katz. He noted that the January 2, 2018 left ankle x-ray revealed a small plantar calcaneal spur and fracture along the medial malleolus of the distal tibia. Referencing Table 16-2, page 503, Dr. Moufawad opined that appellant had 20 percent permanent impairment of the left lower extremity due to ankle malleolar fracture with moderate-to-severe motion deficits and/or moderate malalignment.

By decision dated November 16, 2022, OWCP granted appellant a schedule award for six percent permanent impairment of the left lower extremity. The award ran for 17.28 weeks from August 30 through December 28, 2022.

On November 17, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, on March 7, 2023, OWCP's hearing representative vacated the November 16, 2022 decision, finding that OWCP should have referred Dr. Moufawad's November 6, 2022 addendum report to the DMA for review. The case was, therefore, remanded for further development of appellant's schedule award claim.

On March 27, 2023 OWCP referred the case record, including the November 6, 2022 addendum report by Dr. Moufawad, to Dr. Katz, its DMA, for review.

In an addendum report dated March 30, 2023, Dr. Katz reviewed Dr. Moufawad's November 6, 2022 report. He disagreed with Dr. Moufawad's opinion and explained that the January 24, 2018 MRI scan of the left ankle revealed cortical irregularity of the medial malleolus without associated edema, which was compatible with remote trauma. Dr. Katz determined that the January 24, 2018 MRI scan did not support Dr. Moufawad's alternative impairment rating for a malleolar fracture. He also indicated that, under Table 15-25, page 550, appellant's loss of motion in the left ankle was classified as mild, not moderate or severe. Dr. Katz reiterated his opinion that appellant had six percent permanent impairment of the left lower extremity for sprain, tendinitis, or ruptured tendon with mild motion loss.

By *de novo* decision dated April 26, 2023, OWCP denied appellant's claim for an increased schedule award, finding that appellant was previously paid a schedule award for six percent permanent impairment of the left lower extremity and the medical evidence did not establish an increased impairment.

On May 2, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, on August 4, 2023, OWCP's hearing representative vacated the April 26, 2024 decision, finding that there was a conflict in the medical evidence between Dr. Moufawad, appellant's attending physician, and Dr. Katz, OWCP's DMA, regarding permanent impairment under the sixth edition of the A.M.A., *Guides*. The case was remanded for referral for an impartial medical examination to resolve the conflict.

On September 8, 2023 OWCP referred appellant for an impartial medical examination with Dr. Ralph T. Salvagno, a Board-certified orthopedic surgeon serving as the impartial medical examiner (IME), to resolve the conflict in the medical opinion evidence.

In a report dated October 19, 2023, Dr. Salvagno, serving as the IME, reviewed appellant's medical records, diagnostic studies, and history regarding the January 2, 2018 employment injury and subsequent surgeries. He noted his subjective complaints of loss of motion, mild instability, and continued pain in the left ankle. On physical examination of the left ankle, Dr. Salvagno observed tenderness in the lateral and posterior medial soft tissues and reduced ROM with dorsiflexion, inversion, and eversion. Referencing Table 16-2, page 502, he found a default impairment of five percent of the left lower extremity for ankle instability with mild ligamentous laxity. Dr. Salvagno applied grade modifiers and the net adjustment formula, and found a total of six percent permanent impairment of the left lower extremity. He opined that appellant had reached MMI as of October 19, 2023, the date of his evaluation.

By decision dated October 31, 2023, OWCP denied appellant's claim for an increased schedule award, finding that he was previously paid a schedule award for six percent permanent impairment of the left lower extremity and the medical evidence did not establish an increased impairment. It accorded the special weight of the medical evidence to Dr. Salvagno, the IME.

On November 7, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated December 26, 2023, OWCP's hearing representative vacated the October 31, 2023 decision, finding that IME Dr. Salvagno's October 19, 2023 report was insufficiently rationalized to resolve the conflict in medical opinion. The case was remanded for further development, including clarification from Dr. Salvagno.

In a supplemental report dated February 28, 2024, Dr. Salvagno noted the January 3, 2018 x-ray findings, but indicated that subsequent studies "did not appear to show an acute fracture of the malleolus." He explained that the January 24, 2018 left ankle MRI scan indicated cortical irregularity of the medial malleolus without associated edema, and that edema would have been present if appellant had experienced a bony injury to the tip of the medial malleolus on January 2, 2018. Dr. Salvagno concluded that inclusion of an avulsion fragment of the medial malleolus into a determination of appellant's impairment rating was not supported by the medical record.

By decision dated April 15, 2024, OWCP denied appellant's claim for an increased schedule award, finding that he was previously paid a schedule award for six percent permanent impairment of the left lower extremity and the medical evidence did not establish an increased impairment.

On April 23, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, on May 31, 2024, OWCP's hearing representative vacated the April 15, 2024 decision and remanded the case for OWCP to obtain further clarification from Dr. Salvagno regarding his application of the DBI rating methodology to appellant's accepted January 2, 2018 employment injury.

In a June 28, 2024 supplemental report, Dr. Salvagno indicated that the accepted conditions were left ankle ligament sprain, cellulitis of lower limb, infection following procedure, and left ankle osteomyelitis. He opined that the appropriate diagnosis for an impairment rating was left ankle ligament sprain, noting that the osteomyelitis had resolved. Referring to Table 16-2 of the A.M.A., *Guides*, Dr. Salvagno noted that the class of diagnosis (CDX) for ankle ligament sprain with mild instability would be a Class 1, grade C impairment, with a default value of five percent. He assigned a grade modifier for functional history (GMFH) of 1, as appellant was able to perform his duties as a business owner without restrictions, a grade modifier for physical examination (GMPE) of 2 due to significant limitation of inversion and mild limitation of eversion, and no grade modifier for clinical studies (GMCS) as there were no recent clinical studies. Thus, Dr. Salvagno concluded that appellant had six percent permanent impairment of the left lower extremity.

By decision dated July 26, 2024, OWCP denied appellant's claim for an increased schedule award, finding that he was previously paid a schedule award for six percent permanent impairment of the left lower extremity and the medical evidence did not establish an increased impairment.

On August 6, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, on October 15, 2024, an OWCP hearing representative vacated the July 26, 2024 decision and remanded the case to OWCP to obtain further clarification from Dr. Salvagno with respect to whether appellant had any permanent impairment of the left lower extremity attributable to the accepted condition of left subtalar joint arthritis/primary osteoarthritis of the left ankle and foot. It noted that osteomyelitis was not an accepted condition.

In a November 21, 2024 supplemental report, Dr. Salvagno reviewed Dr. Rosenberg's March 14, 2022 second opinion evaluation report and an updated SOAF. He noted that Dr. Rosenberg had identified subtalar joint arthritis as appellant's most impairing condition in the left ankle region. For rating purposes, Dr. Salvagno classified the condition as moderate, as there had been "no indication for arthroplasty or any such surgical intervention." Referencing Table 16-2, page 506, he found a Class 1 impairment in the second tier for subtalar arthritis, grade C, with a default impairment rating of five percent. Dr. Salvagno applied his prior grade modifiers and the net adjustment formula, which resulted in a grade D impairment in Class 1 with a rating of six percent permanent impairment of the left lower extremity. He noted that application of the A.M.A., *Guides* to the conditions of ankle instability *versus* subtalar joint arthritis yielded the same permanent impairment rating in appellant's case.

By decision dated January 10, 2025, OWCP denied appellant's claim for an increased schedule award, finding that appellant was previously paid a schedule award for six percent

permanent impairment of the left lower extremity and the medical evidence did not establish an increased impairment.

On January 23, 2025 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on April 11, 2025.

By decision dated June 25, 2025, OWCP's hearing representative affirmed OWCP's January 10, 2025 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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. OWCP has 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

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, reference is made to Table 16-2 (Foot and Ankle Regional Grid) beginning on page 502.⁸ 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 using the GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁹ Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.¹⁰

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.¹¹

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary

⁵ *Supra* note 2.

⁶ 20 C.F.R. § 10.404.

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* (6th ed. 2009) 501-508.

⁹ *Id.* at 515-22.

¹⁰ *Id.* at 23-28.

¹¹ *See supra* note 7 at Chapter 2.808.6f (March 2017).

shall appoint a third physician who shall make an examination.¹² This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹³

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.

OWCP determined that a conflict existed in the medical opinion evidence between Dr. Moufawad, appellant's treating physician, and Dr. Katz, OWCP's DMA, regarding permanent impairment due to the accepted January 2, 2018 employment injury. In order to resolve the conflict, it properly referred him to Dr. Salvagno for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a).

In reports dated October 19, 2023 and June 28, 2024, Dr. Salvagno reviewed the SOAF and medical record and related appellant's physical examination findings, including tenderness in the lateral and posterior medial soft tissues and reduced ROM with dorsiflexion, inversion, and eversion. He referenced Table 16-2, Foot and Ankle Regional Grid, page 502, and found that he had six percent permanent impairment of the left lower extremity for ankle ligament sprain with mild instability and limitation of inversion and eversion. In his February 28, 2024 supplemental report, Dr. Salvagno explained that inclusion of an avulsion fragment of the medial malleolus into a determination of appellant's impairment rating was not supported by the medical record. In his November 21, 2024 supplemental report, he noted that application of the A.M.A., *Guides* to the conditions of ankle instability versus subtalar joint arthritis yielded the same rating of six percent permanent impairment of the left lower extremity. Dr. Salvagno also opined that appellant reached MMI as of October 19, 2023, the date of his evaluation.

Dr. Salvagno's October 19, 2023 and February 28, June 28, and November 21, 2024 reports established that he conducted a thorough physical examination and properly applied the A.M.A., *Guides* to his examination findings. As his reports are detailed, well rationalized, and based on a proper factual background, his opinion represents the special weight of the medical evidence.¹⁴

¹² 5 U.S.C. § 8123(a). See *R.C.*, Docket No. 18-0463 (issued February 7, 2020); see also *G.B.*, Docket No. 16-0996 (issued September 14, 2016).

¹³ 20 C.F.R. § 10.321. See also *J.H.*, Docket No. 22-0981 (issued October 30, 2023); *N.D.*, Docket No. 21-1134 (issued July 13, 2022); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

¹⁴ See *A.T.*, Docket No. 25-0272 (issued March 17, 2025).

As the medical evidence of record is insufficient to establish greater than the six percent permanent impairment of the left lower extremity previously awarded, the Board finds that appellant has not met his burden of proof.

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.

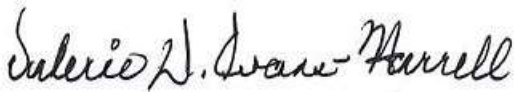
ORDER

IT IS HEREBY ORDERED THAT the June 25, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2025
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

A handwritten signature in black ink, reading "Valerie D. Evans-Harrell". The signature is written in a cursive, flowing style.

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