

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

E.D., Appellant

and

**DEPARTMENT OF THE ARMY, ARMY
DEPOT, Corpus Christi, TX, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 14-1373
Issued: October 10, 2014**

Appearances:
Glenda Turner, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 30, 2014 appellant, through her representative, filed a timely appeal from the March 19, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has more than a one percent impairment of her left lower extremity.

FACTUAL HISTORY

On September 6, 2011 appellant, 59-year-old production controller (aircraft), sustained a traumatic injury in the performance of duty when she stepped on an object that made her lose her balance and stumble. X-rays revealed a minimally displaced comminuted fracture of the

¹ 5 U.S.C. § 8101 *et seq.*

midshaft of the left fifth metatarsal. OWCP accepted appellant's claim for a closed fracture of the left calcaneus.

Dr. Charles W. Kennedy, Jr., a Board-certified orthopedic surgeon, evaluated the permanent impairment to appellant's left lower extremity on December 10, 2013. Appellant's diagnosis was a healed fracture of the left fifth metatarsal. She had no limitation of motion. Appellant's most recent examination showed no tenderness or swelling and she was neurovascularly intact. An extremity questionnaire indicated mild symptoms. Referring to Table 16-2, page 504 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009), Dr. Kennedy determined that appellant had a one percent impairment of her left lower extremity.

On January 13, 2014 Dr. Ronald Blum, an OWCP medical adviser reviewed Dr. Kennedy's evaluation and concurred. Appellant had an essentially nondisplaced fracture of the left fifth metatarsal shaft, which warranted a one percent impairment rating under Table 16-2.

In a decision dated March 19, 2014, OWCP issued a schedule award for a one percent impairment of appellant's left leg. The award was 2.88 weeks of compensation.

Appellant contends on appeal that she is still in pain and can no longer wear certain types of shoes, such as high heels and boots. "I believe that my impairment rating was way too low."

LEGAL PRECEDENT

The schedule award provision of FECA² and the implementing regulations³ 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 shall be determined. The method used in making such a determination is a matter that rests within the sound discretion of OWCP.⁴

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. OWCP has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

² *Id.* at § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Linda R. Sherman*, 56 ECAB 127 (2004); *Danniel C. Goings*, 37 ECAB 781 (1986).

⁵ *Supra* note 3; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010).

ANALYSIS

Diagnosis-based impairment is the primary method of evaluating the lower extremity. Impairment is determined first by identifying the relevant diagnosis, then by selecting the class of the impairment (no objective problem, mild problem, moderate problem, severe problem, very severe problem approaching total function loss), which will provide a default impairment rating. This default rating may then be adjusted slightly for grade, which is determined by functional history, physical examination and clinical studies.⁷

Appellant's diagnosis was a nondisplaced fracture of the left fifth metatarsal shaft. Impairment ratings for fractures of the foot and ankle regions are found in Table 16-2 of the A.M.A., *Guides*. Ratings for a fractured metatarsal are provided on page 504. For a healed fracture with no objective deficits, the class of the impairment is "no objective problem" and the lower extremity impairment rating is zero. For a fracture of a metatarsal other than the first metatarsal, nondisplaced with abnormal examination findings, the class of the impairment is "mild problem" with impairment ratings ranging from zero to two percent. These are the only two classifications that are available for a fractured metatarsal.

X-rays showed the fracture to be essentially nondisplaced. There was no angular deformity that would justify placing appellant's impairment in the mild category. Further, Dr. Kennedy, the evaluating orthopedic surgeon, noted no limitation of motion. Examination findings about a week earlier showed no tenderness and no swelling. Appellant was found to be neurovascularly intact. The record does not contain abnormal examination findings which would justify placing her impairment in the mild category. Given the apparent absence of objective deficits, either on x-ray or physical examination, the classification of "no objective problem" and an impairment rating of zero is correct.

Dr. Kennedy classified the impairment as mild, which has a default impairment rating of one percent. He noted that appellant completed an extremity questionnaire which indicated mild functional symptoms.⁸ Because appellant's impairment was classified as mild, this did not affect the default impairment value.

Physical examination findings appeared negative. No observed or palpable findings were reported. There was no mention of instability, misalignment, deformity, loss of motion, atrophy or leg length discrepancy.⁹ These findings indicate no problem on physical examination and move the default impairment value to the next lower grade. The impairment rating for the next lower grade is one percent, as shown in Table 16-2, page 504.

X-rays confirmed the diagnosis but were not interpreted to show moderate pathology, such as a healed angulation or rotational deformity less than five percent in any plane.¹⁰ The

⁷ A.M.A., *Guides* 497.

⁸ *See id.* at 516 (Table 16-6, Functional History Adjustment).

⁹ *See id.* at 517 (Table 16-7, Physical Examination Adjustment).

¹⁰ *See id.* at 519 (Table 16-8, Clinical Studies Adjustment).

clinical studies establish a mild problem, which does not alter impairment rating. Appellant's final impairment rating, therefore, is one percent.

Appellant contends that her impairment rating was too low. The highest rating any claimant may receive for such a fracture is two percent, but, in appellant's case, none of the adjustments for functional history, physical examination or clinical studies supported an increase in the default impairment value of one percent.

The Board notes a one percent impairment rating equals 2.88 weeks of compensation. Under section 8107(c)(2) of FECA, a claimant who loses a lower extremity is entitled to a maximum of to 288 weeks of compensation.

Section 8107(c)(19) provides that compensation for a partial loss of use is proportionate. Thus, the compensation payable for appellant's one percent impairment is one percent of 288 weeks of compensation or 2.88 weeks of compensation.

The Board finds that appellant has no more than a one percent impairment of her left lower extremity. The default rating for her essentially nondisplaced fifth metatarsal fracture is one percent -- assuming abnormal examination findings -- and the slight adjustment for grade leaves the rating unchanged. The Board will therefore affirm OWCP's March 19, 2014 schedule award.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has no more than a one percent impairment of her left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 10, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board