

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

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**K.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Fort Mitchell, KY, Employer**

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**Docket No. 10-2281  
Issued: June 8, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On September 10, 2010 appellant filed a timely appeal of a March 24, 2010 Office of Workers' Compensation Programs' merit decision granting a schedule award. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant has more than two percent impairment of her right leg for which she received a schedule award.

On appeal, appellant contends that she should have received the same impairment rating for her right leg as her left.

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

## **FACTUAL HISTORY**

On February 6, 2004 appellant, then a 39-year-old distribution clerk, filed an occupational disease claim alleging that she developed plantar fasciitis in the left foot and heel. She underwent a magnetic resonance imaging (MRI) scan of the left foot on February 2, 2004 which demonstrated findings consistent with plantar fasciitis, but no complete disruption of the plantar fascia and longitudinal splitting peroneus brevis. The Office accepted appellant's claim for left foot plantar fasciitis on April 9, 2004. On December 14, 2004 Dr. Matthew G. Enzweiller, a podiatrist, performed a bilateral partial plantar fasciectomy. By decision dated January 30, 2007, the Office granted appellant a schedule award for five percent impairment of the left leg. Appellant requested reconsideration on May 31, 2007. By decision dated June 22, 2007, the Office denied further consideration of the merits.

Appellant filed a notice of recurrence of disability on October 31, 2006 and alleged that her foot condition never improved. She filed a claim for compensation and requested a schedule award on May 29, 2007 for her right foot. On June 13, 2007 the Office explained that appellant's left foot condition was open for medical treatment and that her work-related condition had been accepted for her left foot only.

On March 14, 2008 appellant filed a claim for compensation for a schedule award. She again requested a schedule award for her right foot. Appellant filed a notice of occupational disease on June 16, 2008 alleging that she developed a consequential right foot condition as a result of her accepted left foot plantar fasciitis. By decision dated January 9, 2009, the Office accepted right foot plantar fasciitis as related to her federal employment.

Appellant filed a claim for compensation requesting a schedule award on July 13, 2009 for her right foot. She submitted a report from Dr. Enzweiller dated October 23, 2009 finding that appellant had reached maximum medical improvement on January 12, 2006. Dr. Enzweiller reported that appellant exhibited 5 to 10 degrees of dorsiflexion with normal strength and no evidence of atrophy. He noted that appellant had pain with walking and occasional swelling. Dr. Enzweiller opined that appellant had 10 percent impairment to the whole person due to pain affecting her gait.

The Office medical adviser reviewed the medical evidence on January 15, 2010 and found that appellant had two percent impairment of the right leg. He completed a worksheet complying with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>2</sup> Appellant's diagnosed condition of plantar fasciitis had a default grade of one percent impairment.<sup>3</sup> The Office medical adviser found appellant's functional history and physical history each warranted a grade modifier of two. Applying the appropriate

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<sup>2</sup> For new decisions issued after May 1, 2009, the Office began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6<sup>th</sup> ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

<sup>3</sup> A.M.A., *Guides* 501, Table 16-2.

formula, he determined that appellant had a class 1E or two percent impairment of the right lower extremity.

By decision dated March 24, 2010, the Office granted appellant a schedule award for two percent impairment of the right lower extremity.

### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>4</sup> and its implementing regulations<sup>5</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss or loss of use, of scheduled members or functions of the body. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of the Office. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.

The Act does not authorize the payment of schedule awards for the permanent impairment of the whole person.<sup>6</sup> Payment is authorized only for the permanent impairment of specified members, organs or functions of the body. Because neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the whole person no claimant is entitled to such an award.<sup>7</sup>

It is well established that, when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, his or her opinion is of diminished probative value in establishing the degree of permanent impairment and the Office may rely on the opinion of its medical adviser to apply the A.M.A., *Guides* to the findings of the attending physician.<sup>8</sup>

In addressing upper extremity impairments, the sixth edition requires identification of the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>9</sup>

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<sup>4</sup> 5 U.S.C. §§ 8101-8193, 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Ernest P. Govednick*, 27 ECAB 77 (1975).

<sup>7</sup> *Timothy J. McGuire*, 34 ECAB 189 (1982).

<sup>8</sup> *Linda Beale*, 57 ECAB 429 (2006).

<sup>9</sup> A.M.A., *Guides* 411.

## ANALYSIS

Appellant requested a schedule award for her right leg and submitted a report from her attending physician, Dr. Enzweiller, who found that she had reached maximum medical improvement. Dr. Enzweiller found dorsiflexion of 5 to 10 degrees, normal strength and no atrophy. He reported pain and occasional swelling. Dr. Enzweiller rated 10 percent impairment to the whole person. This report does not comport with the A.M.A., *Guides*. Dr. Enzweiller did not provide any citations to the A.M.A., *Guides* or explain his findings in the terms of the A.M.A., *Guides*. As noted, the Act does not provide for impairment ratings to the whole person. Due to these deficiencies, Dr. Enzweiller's impairment rating is of diminished probative value and does not support appellant's claim to a schedule award in the amount listed.

The Office medical adviser reviewed the medical evidence on January 15, 2010. He agreed with the diagnosis of right plantar fasciitis and provided an impairment rating. The A.M.A., *Guides* provide that plantar fasciitis is a class one condition when significant consistent palpatory findings or radiographic findings are present.<sup>10</sup> The Office medical adviser completed the appropriate formula<sup>11</sup> finding that appellant had a functional history adjustment of grade 2 modifier due to a limp, a moderate problem.<sup>12</sup> He also found that appellant had a physical history adjustment of grade 2 modifier due to moderate palpatory findings consistently documented. The Office medical adviser noted that clinical studies adjustment was not applicable. Applying the appropriate formula, he concluded that appellant had a class 1E or two percent impairment of the right lower extremity.<sup>13</sup> The Board finds that the weight of the medical evidence establishes that appellant has no more than two percent impairment of her right lower extremity for which she received a schedule award.<sup>14</sup>

On appeal, appellant argued that her schedule award for the right leg should be the same as that she received for her left leg. In *Harry D. Butler*,<sup>15</sup> the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.<sup>16</sup> On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule

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<sup>10</sup> *Id.* at 501, Table 16-2.

<sup>11</sup> *Id.* at 521.

<sup>12</sup> *Id.* at 516, Table 16-6.

<sup>13</sup> *Id.* at 501, Table 16-2.

<sup>14</sup> For new decisions issued after May 1, 2009, the Office began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6<sup>th</sup> ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

<sup>15</sup> 43 ECAB 859 (1992).

<sup>16</sup> *Id.* at 866.

award decisions of the Office should reflect use of the sixth edition of the A.M.A., *Guides*.<sup>17</sup> The applicable date of the sixth edition is as of the schedule award decision reached. It is not determined by either the date of maximum medical improvement or when the claim for such award was filed. The Board finds that the Office applied the appropriate edition of the A.M.A., *Guides* to appellant's request for a schedule award and, as noted above, the medical evidence properly correlated with the A.M.A., *Guides* does not support more than two percent impairment of the right lower extremity.

### **CONCLUSION**

The Board finds that appellant has not established that she has more than two percent impairment of her right lower extremity for which she has received a schedule award.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 24, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>17</sup> FECA Bulletin No. 09-03 (March 15, 2009). The FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award & Permanent Disability Claims*, Chapter 2.808.6(a) (January 2010).