

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

T.P., Appellant

and

**U.S. POSTAL SERVICE, ROSELAND POST
OFFICE, Chicago, IL, Employer**

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**Docket No. 11-1225
Issued: February 27, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 26, 2011 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs (OWCP) dated January 27, 2011. 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 established that she has more than a 25 percent impairment of the left lower extremity, for which she received schedule awards.

FACTUAL HISTORY

On February 24, 1998 appellant, then a 42-year-old letter carrier, filed an occupational disease claim alleging that she sustained a left foot injury in the performance of duty. OWCP accepted the claim for left tibialis posterior tendinitis.

¹ 5 U.S.C. § 8101 *et seq.*

On September 14, 2000 OWCP granted appellant a schedule award for 10 percent permanent impairment of her left lower extremity. The period of the award was for 28.8 weeks and ran from March 20 to September 9, 2000.

On September 18, 2003 and January 11, 2010 appellant filed claims for an additional schedule award.

On February 24, 2010 OWCP received an incomplete permanent impairment worksheet for the left lower extremity dated February 11, 2010.

By decision dated March 24, 2010, OWCP denied appellant's claim for an additional schedule award as she failed to provide a report from a physician providing an impairment rating or description of appellant's impairment.

On April 19, 2010 appellant requested an oral hearing before an OWCP hearing representative.

Following her request for an oral hearing, appellant submitted an April 19, 2010 report from Dr. Emil J. Zager, a treating podiatrist, who diagnosed bilateral plantar fasciitis, bilateral Achille's tendinitis, partial Achille's tendon tear and left foot and ankle posterior tibialis tendinitis. Dr. Zager reported decreased range of motion and the development of ankle osteoarthritis.

By decision dated July 7, 2010, an OWCP hearing representative found that further development of the evidence was required based on Dr. Zager's report. The hearing representative remanded the case to OWCP to undertake additional development on appellant's claim for a schedule award.

On September 9, 2010 OWCP concluded a second opinion evaluation was required and referred appellant to Dr. Mukund Komanduri, a Board-certified orthopedic surgeon, to address appellant's impairment rating under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). On October 13, 2010 Dr. Komanduri reviewed a statement of accepted facts and medical evidence and conducted a physical examination. The physical examination revealed a severe antalgic gait, significant deformity, rigid flat foot and restriction of ankle range of motion associated with a calcaneus fracture. Using Table 16-2, page 503 of the A.M.A., *Guides*, Dr. Komanduri, found a class 3 impairment based on appellant's severe malalignment. Next, he determined that a grade E was warranted based on adjustments for physical examination and functional history, resulting in a 43 percent left lower extremity impairment. In a November 15, 2010 addendum, Dr. Komanduri reviewed additional medical evidence and stated that his opinion on appellant's permanent impairment remained unchanged.

On January 11, 2011 Dr. Neil Ghoadra, an OWCP medical adviser, reviewed Dr. Komanduri's report and disagreed with his impairment determination of 43 percent. Dr. Ghoadra concluded that appellant had a 25 percent impairment of the left lower extremity using Table 16-2. In reaching this determination, Dr. Ghoadra found a class 2 impairment with a grade E due to appellant's moderate malalignment and severe motion restraint.

By decision dated January 27, 2011, OWCP granted appellant an additional schedule award for a 15 percent impairment of her left lower extremity for a total 25 percent impairment.

LEGAL PRECEDENT

Under section 8107 of FECA² and section 10.404 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. FECA, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁵ Under the sixth edition, the evaluator identifies 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).⁶ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁷

OWCP 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 percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.⁸

ANALYSIS

OWCP accepted appellant's claim for left tibialis posterior tendinitis and granted appellant a schedule for a 10 percent permanent impairment of the left lower extremity on September 14, 2000. Appellant subsequently filed a claim for an increased schedule award and was granted an additional schedule award for a 15 percent left lower extremity impairment. The

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *D.J.*, 59 ECAB 620 (2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁵ A.M.A., *Guides* (6th ed., 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

⁶ A.M.A., *Guides* (6th ed. 2009), pp. 383-419.

⁷ *Id.* at 411.

⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (January 2010). See *Frantz Ghassan*, 57 ECAB 349 (2006); *C.K.*, Docket No. 09-2371 (issued August 18, 2010).

issue on appeal is whether she has establishment entitlement to an impairment rating greater than 25 percent left lower extremity impairment for which she has received schedule awards.

The evidence relevant to her schedule award claim consists of reports from Drs. Komanduri and Ghoadra. Dr. Komanduri cited to Table 16-2, page 503 of the A.M.A., *Guides* (6th ed.) in finding that appellant had a 43 percent left lower extremity impairment. In reaching this determination, he found appellant's impairment was a class 3 with a grade E due to adjustments for physical examination and functional history. However, Dr. Komanduri provided no reference to or discussion of how he determined the grade modifiers used in the net adjustment formula as described in section 16.2 of the sixth edition to reach the appropriate grade within the class of diagnosis.⁹ As such, impairment rating provided by Dr. Komanduri requires further explanation.¹⁰

In a January 11, 2011 report, Dr. Ghoadra disagreed with Dr. Komanduri's impairment finding. Using Table 16-2, he concluded that appellant had a 25 percent impairment of the left lower extremity. In reaching this determination, Dr. Ghoadra found a class 2 impairment with a grade E due to appellant's moderate malalignment and severe motion restraint, but failed to explain how he used the grade modifiers or the net adjustment formula in reaching his final impairment rating. He also failed to provide any reference to or discussion of how he determined the grade modifiers used in the net adjustment formula as described in section 16.2 of the sixth edition to reach the appropriate grade within the class of diagnosis.¹¹ As such, impairment rating provided by Dr. Ghoadra requires further explanation.¹²

The Board will remand the case to OWCP to undertake additional development of the medical evidence to appropriately determine if appellant has an additional impairment of the left lower extremity for schedule award purposes. On remand, OWCP should request clarification and develop the medical evidence as appropriate to determine the extent of permanent impairment due to appellant's accepted employment injury under the sixth edition of the A.M.A., *Guides*. Following this and such other development as it deems necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision. The Board will set aside OWCP's decision and remand the case for further development consistent with the findings herein.

⁹ A.M.A., *Guides*, *supra* note 6 at 497-500.

¹⁰ See *L.H.*, 58 ECAB 561 (2007) (where impairment has not been correctly described, a new or supplemental evaluation should be obtained in accordance with OWCP procedures).

¹¹ A.M.A., *Guides*, *supra* note 9.

¹² See *L.H.*, *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 27, 2011 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: February 27, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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