United States Department of Labor
Employees' Compensation Appeals Board

T.F., Appellant	)	
and	)	**Docket No. 12-1540**
	)	**Issued: February 8, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Moline, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 9, 2012 appellant filed a timely appeal from a June 4, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding a schedule. 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 the claim.

ISSUE

The issue is whether appellant sustained more than one percent impairment of the left leg for which she received a schedule award.

On appeal, appellant contends that she sustained a significant impairment of the left ankle affecting her work, recreational and personal activities.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on September 4, 2007 appellant, then a 41-year-old city letter carrier, sustained a left ankle sprain and strain and left tibial tendinitis with contracture of the tendon sheath after she walked on plant debris while delivering mail.

Dr. Peter F. Alward, an attending Board-certified orthopedic surgeon, submitted reports from September 24 to November 8, 2007. He diagnosed a left ankle sprain with posterior tibial tendinitis due to the September 4, 2007 work incident. Dr. Alward obtained x-rays showing no fracture or dislocation of the left ankle. A December 2007 magnetic resonance imaging scan showed a tendon tear in the left ankle.

On February 13, 2008 appellant was treated by Drs. Helena Reid and Eric C. Palmquist, attending podiatrists. In reports through December 9, 2008, the physicians diagnosed a partial tear of the posterior tibial tendon with tenosynovitis, complicated by pes planus and a calcaneal valgus deformity. On December 11, 2008 Dr. Reid and Dr. Palmquist performed a left medializing calcaneal slide osteotomy, a transfer of the flexor digitorum longus to the posterior tibial tendon and an endoscopic gastrocnemius resection. OWCP approved the procedure. Appellant was off work from December 11, 2008 to March 21, 2009. She received total disability compensation for this period and returned to full-time light-duty work.

Dr. Palmquist submitted progress reports and continued work restrictions through December 2010. Appellant continued to have left foot pain and minimal difficulty walking. In January 19 and April 26, 2011 reports, he provided permanent work restrictions attributable to the accepted injuries. As of April 4, 2011, appellant was "at maintenance." On April 7, 2011 Dr. Palmquist opined that appellant had attained maximum medical improvement. He noted no gait abnormalities, no sensory deficits in the left foot and ankle and a normal range of motion of all joints. Appellant no longer wore a prescribed orthotic. Dr. Palmquist observed motor strength in the left ankle at -5/5 although there was no muscle atrophy.

On April 13, 2011 appellant claimed a schedule award. In an April 22, 2011 letter, OWCP advised appellant of the additional evidence needed to establish her schedule award claim, including a report from her attending physician rating impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). It also requested information directly from Dr. Palmquist who did not submit an impairment rating.

On May 22, 2012 OWCP referred a statement of accepted facts and the medical record to an OWCP medical adviser for an impairment rating based on Dr. Palmquist's reports. In a May 28, 2012 report, Dr. Daniel D. Zimmerman, an OWCP medical adviser, provided an impairment rating for the left leg according to the sixth edition of the A.M.A., *Guides*. He reviewed the medical record and statement of accepted facts. Dr. Zimmerman concurred with Dr. Palmquist that appellant attained maximum medical improvement on April 4, 2011. Referring to Table 16-2 of the A.M.A., *Guides*, the Foot and Ankle Regional Grid, OWCP's medical adviser found a class 1 diagnosis-based impairment (CDX) for strain tendinitis or history of a ruptured posterior tibialis tendon. The default value was one percent, which the medical adviser explained was appropriate as appellant had a full range of motion and no fixed or flexible deformity. Dr. Zimmerman noted a grade modifier for Physical Examination

(GMPE) of 1 for -5/5 weakness according to Table 16-7,[2] and a grade modifier for Functional History (GMFH) of zero according to Table 16-6 as appellant had no postsurgical gait antalgia and did not use an orthotic.[3] He found that a grade modifier for Clinical Studies (GMCS) was not applicable according to Table 16-8[4] as there were no studies following surgery. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (0-1) + (1-1), the medical adviser found a minus one adjustment to the default grade, such that the default value of one percent remained unchanged. Dr. Zimmerman found a one percent impairment of the left lower extremity.

By decision dated June 4, 2012, OWCP granted appellant a schedule award for a one percent impairment of the left lower extremity. The period of the award ran from April 4 to 24, 2011.

LEGAL PRECEDENT

The schedule award provisions of FECA provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, 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 sound discretion of OWCP. 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 A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[5] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.[6]

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).[7] Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition, which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.[8] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).

[2] Table 16-7, page 517 of the sixth edition of the A.M.A., *Guides* is entitled "Physical Examination Adjustment -- Lower Extremities."

[3] Table 16-6, page 516 of the sixth edition of the A.M.A., *Guides* is entitled "Functional History Adjustment -- Lower Extremities."

[4] Table 16-8, page 519 of the sixth edition of the A.M.A., *Guides* is entitled "Clinical Studies Adjustment -- Lower Extremities."

[5] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[7] A.M.A., *Guides* (6th ed., 2008), page 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[8] A.M.A., *Guides* (6th ed., 2008), pp. 494-531.

ANALYSIS

OWCP accepted that appellant sustained a left ankle sprain and strain and left tibial tendinitis with contracture of the tendon sheath, necessitating a left medializing calcaneal slide osteotomy, transfer of the flexor digitorum longus to the posterior tibial tendon and an endoscopic gastrocnemius resection. Appellant claimed a schedule award on April 13, 2011. In support of her claim, she submitted reports from Dr. Palmquist, an attending Board-certified podiatrist, who noted that appellant attained maximum medical improvement as of April 4, 2011. On an April 7, 2011 examination of the left lower extremity, Dr. Palmquist diagnosed no gait abnormalities, no sensory deficits in the foot and ankle, a normal range of motion of all joints, and -5/5 weakness. OWCP advised appellant and Dr. Palmquist on April 22, 2011 to submit an impairment rating according to the sixth edition of the A.M.A., *Guides*. As Dr. Palmquist did not provide an impairment rating, OWCP referred the medical record and a statement of accepted facts to Dr. Zimmerman, a medical adviser, to determine the appropriate percentage of permanent impairment.

Dr. Zimmerman provided a May 28, 2012 impairment rating for the left lower extremity, utilizing the sixth edition of the A.M.A., *Guides*. After reviewing the medical record and statement of accepted facts, he concurred with Dr. Palmquist that appellant attained maximum medical improvement on April 4, 2011. Dr. Zimmerman found a class 1 CDX for tendinitis and a history of a ruptured posterior tibialis tendon, with a default value of one percent. He explained that this was the only appropriate percentage as appellant had no motor deficit or postsurgical foot deformity. Dr. Zimmerman found a GMPE of 1 for -5/5 weakness, a GMFH of 0 as appellant had a normal gait and no longer used orthotics as of April 4, 2011, and noted that a GMCS was not applicable as there were no postsurgical studies. Applying the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), or (0-1) + (1-1), he calculated a minus one adjustment to the default grade, resulting in a one percent impairment of the left lower extremity.

The Board finds that Dr. Zimmerman applied the proper tables and grading schemes to Dr. Palmquist's findings in determining the appropriate percentage of lower extremity impairment. Therefore, OWCP properly awarded appellant a schedule award for a one percent impairment of the left lower extremity.

On appeal, appellant contends that she sustained a significant impairment of the left ankle, affecting work, recreational and personal activities. She noted that she no longer worked at the employing establishment as she was medically unable to perform her light-duty job.[9] However, the medical evidence does not support that appellant sustained more than a one percent impairment of the left lower extremity.

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.

[9] The Board notes that there is no claim of record for a recurrence of disability related to appellant separating from the employing establishment.

CONCLUSION

The Board finds that appellant has not established that she sustained more than a one percent impairment of the left lower extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 4, 2012 is affirmed.

Issued: February 8, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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