United States Department of Labor
Employees' Compensation Appeals Board

N.A., Appellant	)	
and	)	**Docket No. 16-1499**
	)	**Issued: December 16, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Hamburg, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 14, 2016 appellant filed a timely appeal from a May 16, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish permanent impairment of his left lower extremity, warranting a schedule award.

FACTUAL HISTORY

OWCP accepted that on September 3, 2013 appellant, then a 33-year-old city carrier assistant, sustained a left ankle sprain, contracture of a joint of the left lower leg, left contracture

[1] 5 U.S.C. § 8101 *et seq.*

of a tendon (sheath), enthesopathy of the left ankle and tarsus, and left tibialis tendinitis when he rolled his left ankle as he carried mail while walking across a lawn.

Appellant stopped work on the date of injury. He returned to full-time modified-duty work on September 5, 2013, but stopped work again on September 14, 2013.[2] On October 5, 2013 appellant returned to part-time, limited-duty work, but stopped work again on December 9, 2013 when his appointment expired. He returned to full-time, modified-duty work on March 7, 2015, but stopped work again on April 6, 2015 and filed a claim for a recurrence of disability (Form CA-2a). OWCP denied appellant's recurrence claim on September 30, 2015. Appellant returned to full-time modified work on May 20, 2015.

On April 5, 2016 appellant filed a claim for a schedule award (Form CA-7) and submitted medical evidence. In an April 14, 2015 functional capacity evaluation (FCE), a registered occupational therapist, noted that he had occasional complaints of left ankle and low back pain and pain behaviors during the test procedure. She found that appellant demonstrated the ability to perform medium physical demand level work. Appellant did not demonstrate the ability to perform all of the physical demand levels required of a mail carrier. He reported an attempt to perform light-duty work for approximately one month ending approximately one week prior to his evaluation, but he was unable to tolerate the physical work demands. The occupational therapist recommended that appellant undergo vocational counseling if the employing establishment could not accommodate him at his present level of function.

In an April 5, 2016 duty status report (Form CA-17), Dr. Jennifer Gurske-Deperio, an attending orthopedic surgeon, diagnosed posterior tibialis tendon tear. Dr. Gurske-Deperio opined that appellant could perform regular full-duty work based on an FCE.

By letter dated April 13, 2016, OWCP advised appellant of the deficiencies of his claim and requested a medical report from his physician assessing his permanent impairment based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) and establishing the date that he had reached maximum medical improvement (MMI). Appellant was afforded 30 days to submit the requested information. He did not respond.

In a May 16, 2016 decision, OWCP denied appellant's claim for a schedule award. It found that the medical evidence of record failed to demonstrate a measurable impairment related the accepted September 3, 2013 employment injuries. OWCP noted that appellant did not respond to the April 13, 2016 development letter.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

[2] On January 17, 2014 OWCP accepted that appellant sustained a recurrence of disability effective September 14, 2013.

[3] 5 U.S.C. § 8107.

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. 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 the appropriate standards for evaluating schedule losses.[4]

Before the A.M.A., *Guides* can be utilized, a description of impairment must be obtained from the claimant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[5]

ANALYSIS

The Board finds that appellant has not established any permanent impairment of his left lower extremity. OWCP accepted his claim for left ankle sprain, contracture of a joint of the left lower leg, left contracture of a tendon (sheath), enthesopathy of the left ankle and tarsus, and left tibialis tendinitis as a result of a September 3, 2013 employment injury.

In support of his claim, appellant submitted an April 5, 2016 Form CA-17 report completed by Dr. Gurske-Deperio, an attending physician, who diagnosed posterior tibialis tendon tear. Dr. Gurske-Deperio found that he could perform regular full-duty work based on an FCE. Her report offered no medical opinion as to whether appellant had reached MMI or sustained any left lower impairment causally related to the accepted left ankle and left leg conditions based on his application of the A.M.A., *Guides*. The evaluation made by Dr. Gurske-Deperio must include a description of the impairment that is in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[6] As her report did not discuss MMI or any employment-related left lower extremity impairment, it is of diminished probative value and insufficient to establish appellant's entitlement to a schedule award.

Appellant also submitted an FCE report dated April 14, 2015. This was completed by a registered occupational therapist. An occupational therapist is a lay individual and is not

[4] 20 C.F.R. § 10.404 (1999); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

[5] *Vanessa Young*, 55 ECAB 575 (2004).

[6] *Id.*

competent to render a medical opinion under FECA.[7] The FCE is therefore of no probative value regarding appellant's impairment.

By letter dated April 13, 2016, OWCP notified appellant of the deficiencies of his claim and requested additional evidence, including a detailed description of any permanent impairment and a final impairment rating. Appellant did not respond. He did not submit any medical evidence to establish that, under the A.M.A., *Guides*, he sustained a permanent impairment due to his accepted work injuries. The Board finds that appellant did not meet his burden of proof to establish that he is entitled to a schedule award as a result of his employment-related left ankle and left leg conditions.

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 impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish permanent impairment of his left lower extremity, warranting a schedule award.

[7] *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). 5 U.S.C. § 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See Roy L. Humphrey*, 57 ECAB 238 (2005).

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2016
Washington, DC

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

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

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