United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 16-1166**
	)	**Issued: October 25, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 16, 2016 appellant filed a timely appeal from a March 31, 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.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish more than two percent permanent impairment of the right lower extremity for which he received a schedule award.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted new medical reports after the issuance of OWCP's March 31, 2016 decision. However, the Board lacks jurisdiction to review new evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On September 7, 2011 appellant, then a 44-year-old letter carrier, sustained a right heel injury and plantar fasciitis as a result of carrying mail. OWCP initially accepted the claim for other enthesopathy of the right ankle and tarsus and later accepted right plantar fasciitis and contusion of the right foot/heel. Appellant stopped work that day and later began working reduced hours. He received wage-loss compensation benefits beginning February 11, 2012.

Initial medical reports diagnosed right heel pain and plantar fasciitis attributable to increased workload at his job. An October 27, 2011 bone scan of the feet revealed nonspecific areas of increase in activity in the intertarsal and first metatarsophalangeal joints bilaterally due to arthritic changes and a focal area of increase in the plantar aspect of the right os calcis possibly a focal contusion or due to an occult facture.

On August 26, 2013 appellant filed a claim for a schedule award (Form CA-7). In an October 2, 2013 decision, OWCP denied his initial claim for a schedule award as no permanent employment-related impairment was established.

In an October 21, 2013 second opinion examination, Dr. Jon Levy, a Board-certified orthopedic surgeon, opined that appellant remained clinically symptomatic and continued to have residuals of the injury.

On July 17, 2014 appellant again requested a schedule award (Form CA-7). In an April 25, 2014 report, Dr. Edward Snell, Board-certified in family and sports medicine, provided an impairment rating. He advised that appellant initially broke his foot 12 years prior and had experienced foot pain since September 2011. Dr. Snell diagnosed right post-traumatic osteoarthritis. He indicated that using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[3] appellant had 27 percent lower extremity permanent impairment or 10 percent whole person impairment. Dr. Snell indicated that he arrived at 27 percent impairment by combining appellant's class 1, grade C impairment for plantar fasciitis and class III, grade A impairment for osteoarthritis.

On October 8, 2014 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and OWCP medical adviser, reviewed Dr. Snell's report and disagreed with his impairment rating as he based his schedule award on a diagnosis that was not included in the accepted conditions. He opined that appellant had two percent permanent impairment to the right lower extremity. Dr. Berman noted that using the sixth edition of the A.M.A., *Guides*, page 501, Table 16-2 and the impairment class for plantar fasciitis, appellant had class 1 impairment for a default one percent impairment. He assigned a grade modifier 1 for functional history as appellant was mildly deficient, grade modifier 1 for physical examination, and grade modifier 2 for clinical studies as clinical studies confirmed the diagnosis of a moderate problem and moderate pathology with arthritis noted. Using the net adjustment formula, he calculated a +1 net adjustment that moved appellant from grade C to grade D for two percent permanent impairment.

[3] A.M.A., *Guides* (6th ed. 2009).

In a March 11, 2015 decision, OWCP granted a schedule award for two percent permanent impairment of his right lower extremity. The award ran for 5.76 weeks.

On March 25, 2015 appellant requested an oral telephone hearing with an OWCP hearing representative. By letter dated April 10, 2015, he rescinded his request for an oral hearing and requested review of the written record instead.

By decision dated August 19, 2015, an OWCP hearing representative affirmed the previous decision.

By letter dated November 19, 2015, appellant requested reconsideration.

In an October 28, 2015 report, Dr. Snell provided a supplemental impairment rating. He diagnosed post-traumatic osteoarthritis of the foot that originally occurred when a ball fell on his foot in 2001. On examination Dr. Snell noted tenderness to palpation along the tarsal navicular joint, significant tenderness along the peroneal tendon, subluxation of the peroneal tendon, and antalgic gait. Using the sixth edition of the A.M.A., *Guides*, he opined that appellant had 11 percent permanent impairment. Dr. Snell indicated that using page 501, appellant had a class 1, level 2 impairment for peroneal tendon injury. He also noted that appellant had mild osteoarthritis. Dr. Snell opined that taking these "two together using the combined table in the book," appellant had a combined 11 percent permanent impairment.

On February 20, 2016 Dr. Arthur S. Harris, an orthopedic surgeon and OWCP medical adviser, reviewed medical evidence of record and concluded that appellant was not entitled to an additional schedule award. He disagreed with Dr. Snell's October 28, 2015 report, as he did not believe appellant's post-traumatic osteoarthritis had not been accepted as a work-related injury. Dr. Harris agreed that appellant had two percent lower extremity impairment.

By decision dated March 31, 2016, OWCP denied modification of its prior decision.

On appeal appellant argues that his bone contusion and arthritis were work-related conditions.

LEGAL PRECEDENT

Section 8107 of FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[4] Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has

[4] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[5] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.[6]

The sixth edition requires identifying the impairment Class for Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).[7] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[8]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and extent in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.[9]

ANALYSIS

The Board finds that appellant has no greater than two percent permanent impairment of his right leg. OWCP accepted the claim for other enthesopathy of the right ankle and tarsus, right plantar fasciitis, and contusion of the right foot/heel. On March 11, 2015 it granted a schedule award for two percent permanent impairment of his right lower extremity. Appellant claimed an additional schedule award and submitted a supplemental impairment rating from Dr. Snell.

In his October 28, 2015 report, Dr. Snell calculated 11 percent permanent impairment. He diagnosed post-traumatic osteoarthritis of the foot that originally occurred when a ball fell on his foot in 2001. On examination Dr. Snell noted tenderness to palpation along the tarsal navicular joint, significant tenderness along the peroneal tendon, subluxation of the peroneal tendon, and antalgic gait. He indicated that appellant had a class 1, peroneal tendon injury and noted that a clinical x-ray showed mild osteoarthritic change. Dr. Snell opined that by combining the two diagnoses appellant had 11 percent total permanent impairment. However, the impairment rating provided by Dr. Snell lacks probative value as it is not based on a proper application of the A.M.A., *Guides*. Dr. Snell did not explain in detail how he arrived at his impairment calculation under the A.M.A., *Guides.* He did not detail the grade modifiers that he used nor did he explain how he applied the net adjustment formula.[10] Furthermore, Dr. Snell indicates that he combined the ratings for two diagnoses to arrive at his rating. However, the

[5] 20 C.F.R. § 10.404(a).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims,* Chapter 2.808.5a (February 2013) and Part 3 -- Medical, *Schedule Awards,* Chapter 3.700, Exhibit 1 (January 2010).

[7] A.M.A., *Guides* 494-531.

[8] *Id*. at 521.

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

[10] *See supra* notes 7, 8.

A.M.A., *Guides*, contemplate that only one diagnosis will be used.[11] As Dr. Snell did not properly apply the A.M.A., *Guides*, his opinion on permanent impairment is of limited probative value.[12]

Consistent with its procedures,[13] OWCP properly referred the matter to an OWCP medical adviser for an opinion regarding appellant's permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*. On February 20, 2016 Dr. Harris, an OWCP medical adviser, reviewed medical evidence of record and concluded that appellant was not entitled to an additional schedule award. He found no basis under the A.M.A., *Guides* to rate additional permanent impairment for residuals of the accepted conditions. There is no other current probative medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has more than two percent permanent impairment of the right leg.

Appellant may, at any time, 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 not established greater than two percent permanent impairment of his right lower extremity, for which he received a schedule award.

[11] *See* A.M.A., *Guides* 499 (if more than one diagnosis in a region can be used, the one that provides the most clinically accurate and causally-related impairment should be used).

[12] *See J.G.*, Docket No. 09-1128 (issued December 7, 2009) (an attending physician's report is of little probative value where the A.M.A., *Guides* are not properly followed).

[13] *Supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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