United States Department of Labor
Employees' Compensation Appeals Board

K.L., Appellant	)	
	)	**Docket No. 19-0090**
and	)	**Issued: May 3, 2019**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Bridgeview, IL, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 16, 2018 appellant filed a timely appeal from a May 17, 2018 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]

---

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the May 17, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than 10 percent permanent impairment of the right lower extremity, for which she previously received a schedule award.

FACTUAL HISTORY

OWCP accepted that on December 16, 2015 appellant, then a 54-year-old letter carrier, sustained a right ankle fracture when she slipped on a timber log on a customer's property delivering mail while in the performance of duty. It authorized an open reduction and internal fixation to repair a bimalleolar ankle fracture and right syndesmosis, which was performed on December 18, 2015.

On November 3, 2017 appellant filed a claim for a schedule award (Form CA-7). As no medical evidence was submitted with her claim, by letter dated November 7, 2017, OWCP requested that she submit an impairment evaluation from her attending physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3]

In a December 22, 2017 medical report, Dr. Neil Allen, an attending physician Board-certified in internal medicine and neurology, provided a history of clinical presentation. He described the accepted December 16, 2015 employment injury and appellant's medical treatment, including her authorized December 18, 2015 right ankle surgery. Dr. Allen noted her right ankle symptoms, which included constant right ankle pain up to 8 on a scale of 10 with swelling, pinching on the outside of the ankle, and an inability to squat or run. He reported exacerbating factors which included appellant being unable to walk more than 15 minutes and stand more than 10 minutes. Appellant was also unable to wear high top shoes and endure any force through the lower limb (stepping off a curb/out of a vehicle).

Dr. Allen advised that appellant had reached maximum medical improvement (MMI). He addressed her functional history utilizing Table 1-2, page 4 of the sixth edition of the A.M.A., *Guides* which listed activities of daily living (ADLs). Dr. Allen reported that appellant had moderate interference with self-care, personal hygiene, travel, and sleep. Appellant had severe interference with physical activity. She had no interference with communication and sensory and sexual function. Dr. Allen reported that her American Academy of Orthopedic Surgeons (AAOS) Lower Limb Questionnaire score was 26. On examination of the right ankle, Dr. Allen observed a stiff gait pattern and moderate enlargement compared to the opposite side. The circumference of the ankle measured at 26 centimeters (cm) on the right and 24 cm on the left. Appellant had a 9 cm well-healed surgical scar over the lateral malleolus. She also had a 5 cm well-healed surgical scar over the medial malleolus. On palpation, there was widespread tenderness. On neurovascular examination, soft touch and sharp/dull discrimination were intact. Muscle strength on the right (affected side) was 5/5 for dorsiflexion, inversion, and plantarflexion, and 4/5 for eversion. Muscle strength on the left (unaffected side) was 5/5 for dorsiflexion, inversion, plantarflexion, and

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

eversion. Dr. Allen reported range of motion as +18 degrees (+20 degrees, +18 degrees) of dorsiflexion, 61 degrees (56 degrees, 58 degrees) of plantar flexion, 26 degrees (21 degrees, 24 degrees) of inversion and 4 degrees (-l degree, l degree) of eversion on the right (affected side). He further reported range of motion as +2 degrees of dorsiflexion, 64 degrees of plantar flexion, 28 degrees of inversion, and 12 degrees of eversion on the left (unaffected side). Clinical studies included a June 10, 2016 computerized tomography (CT) scan of the right ankle which revealed previous surgical changes with incomplete bony fusion small fragment posterior talus. There were no findings of hardware failure. There were several small bone fragments along the anterior aspect of the talofibular joint space, small curved lucency medial navicular, and fracture *versus* emissary vein. X-rays of the right ankle which were performed on June 2, 2016 revealed a well-aligned bimalleolar and syndesmotic repair.

Dr. Allen utilized the diagnosis-based impairment (DBI) rating method of the sixth edition of the A.M.A., *Guides* to calculate appellant's right ankle permanent impairment. He found that, under Table 16-2, page 503, Foot and Ankle Regional Grid, the radiology and physical examination findings of a mild motion deficit in eversion and bimalleolar fracture represented a class one impairment with a default value of 10 percent lower extremity permanent impairment. Dr. Allen cited Table 15-7, page 406, regarding appellant's functional history of an AAOS Lower Limb Questionnaire score of 26. However, he excluded functional history as a grade modifier from his net adjustment calculation, citing to page 516 because the grade for functional history varied by two or more grades from physical examination and clinical studies. Dr. Allen also excluded physical examination and clinical studies as grade modifiers from his net adjustment calculation, citing to page 521 because they were used in the class placement. He concluded that appellant had 10 percent permanent impairment of the right lower extremity. Dr. Allen related that the right ankle default value of 10 percent permanent lower extremity impairment remained unchanged.

On March 28, 2018 OWCP routed Dr. Allen's report, a statement of accepted facts (SOAF), and the case file to Dr. Nathan Hammel, a Board-certified orthopedic surgeon and an OWCP district medical adviser (DMA), for review and a determination of permanent impairment of appellant's right lower extremity and her date of MMI.

In an April 2, 2018 report, Dr. Hammel indicated that he had reviewed the SOAF and the medical record. He noted that the most recent clinical examination note documented continued right ankle pain after surgery for a bimalleolar ankle fracture, appellant's AAOS Lower Limb Questionnaire score of 26, and mild limitation in ankle range of motion. Dr. Hammel also noted that x-rays of the right knee showed a well-aligned ankle fracture that was healed. He determined that application of the DBI rating method under Table 16-2 on page 503 of the sixth edition of the A.M.A., *Guides* meant that appellant's ankle fracture fell under class 1 with a default grade C. Dr. Hammel assigned a grade modifier 1 for history based on the AAOS instrument. He assigned a grade modifier 1 for physical examination based on mild motion deficit. Dr. Hammel noted that a grade modifier for clinical studies was not applicable because they set the class placement. He calculated a net adjustment of 0, and found a right lower extremity permanent impairment rating of 10 percent. Dr. Hammel indicated that there was no change in the default grade C. He found that appellant had reached MMI on January 30, 2018.

OWCP, by decision dated May 17, 2018, granted appellant a schedule award for 10 percent permanent impairment of the right lower extremity. The period of the award ran for 28.8 weeks from January 30 through August 19, 2018, and was based on the opinions of Dr. Allen and Dr. Hammel.

LEGAL PRECEDENT

The schedule award provisions of FECA,[4] and its implementing federal regulation,[5] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

With respect to the foot/ankle, the relevant portion of the leg for the present case, reference is made to Table 16-2 (Foot and Ankle Regional Grid) beginning on page 501.[8] After the class of diagnosis (CDX) is determined from the Foot and Ankle Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for functional history (GMFH), grade modifier for physical examination (GMPE), and grade modifier for clinical studies (GMCS). The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[9]

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 extent of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than 10 percent permanent impairment of the right lower extremity, for which she previously received a schedule award.

---

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id*. at § 10.404(a).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[8] *See* A.M.A., *Guides* 501-08 (6th ed. 2009).

[9] *Id.* at 515-22.

[10] *See supra* note 7 at Chapter 2.808.6(f) (March 2017).

OWCP accepted that appellant sustained a right ankle fracture with resulting surgery performed on December 18, 2015. Appellant's physician, Dr. Allen, and OWCP's DMA, Dr. Hammel, agreed that appellant had 10 percent permanent impairment of her right lower extremity due to her right bimalleolar ankle fracture under the DBI methodology. The A.M.A., *Guides* provide that a bimalleolar ankle fracture is a class 1 impairment with a default grade C impairment value of 10 percent of the lower extremity.[11] Dr. Hammel determined that appellant had grade 1 modifiers for functional history and physical examination. He applied the net adjustment formula and determined that appellant's default impairment at class 1, grade C was 10 percent permanent impairment of the right lower extremity. The Board finds that the medical evidence does not establish more than 10 percent impairment of appellant's right lower extremity for which she previously received a schedule award.[12]

On appeal, appellant contends that she is entitled to a greater schedule award because she continues to suffer from permanent effects of her accepted employment-related injury. For the reasons discussed above, she has not established entitlement to a greater schedule award.

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 her burden of proof to establish greater than 10 percent permanent impairment of the right lower extremity, for which she previously received a schedule award.

[11] A.M.A., *Guides* 503, Table 16-2.

[12] *See D.K.,* Docket No. 18-0135 (issued August 20, 2018).

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2019
Washington, DC

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

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

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