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

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| **R.J., Appellant** | ) | |
| **and** | ) | **Docket No. 23-0580** |
| | ) | **Issued: April 15, 2024** |
| **U.S. POSTAL SERVICE, HENRY W. MCGEE POST OFFICE, Chicago, IL, Employer** | ) | |

*Appearances:*
*Stephanie Leet, Esq.*, for the appellant[1]
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### *JURISDICTION*

On March 16, 2023 appellant, through counsel, filed a timely appeal from a December 27, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

### *ISSUES*

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's medical benefits effective July 14, 2022, as he no longer had residuals causally related to his

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

accepted employment injury; (2) whether appellant has met his burden of proof to establish continuing employment-related residuals on or after July 14, 2022 due to his accepted employment injury; and (3) whether appellant has met his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

## ***FACTUAL HISTORY***

On August 9, 2007 appellant, then a 41-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bone spurs on both feet due to factors of his federal employment, including walking and climbing stairs while carrying an overburdened route. He first became aware of his condition on May 27, 2007 and attributed it to factors of his federal employment on August 8, 2007. Appellant stopped light-duty work on October 13, 2007 and accepted a modified letter carrier position on December 4, 2008. OWCP accepted the claim for aggravation of bilateral calcaneal heel spurs.[3] It paid wage-loss compensation on the supplemental rolls beginning on May 29, 2007. Appellant returned to full-time light-duty work on June 1, 2013.

On May 15, 2014 appellant underwent magnetic resonance imaging (MRI) scans of his ankles, which demonstrated soft tissue edema and tenosynovitis of the tibial tendon.

On December 11, 2019 appellant filed a notice of recurrence (Form CA-2a) alleging that on December 2, 2019 he sustained a recurrence of disability causally related to the accepted May 27, 2007 employment injury. On March 23, 2020 OWCP accepted that he had sustained a recurrence of disability on December 3, 2019. It paid appellant wage-loss compensation on the supplemental rolls as of December 3, 2019. Appellant returned to his full-time full-duty work on January 15, 2020.

OWCP continued to receive medical evidence. On September 22, 2020 appellant underwent a right foot MRI scan which demonstrated severe osteoarthritis with severe marginal spurring of the first metatarsophalangeal joint and thickening of the medial collateral ligament, bursitis, small Morton's neuroma, medial flexor tenosynovitis, and mild peroneal tenosynovitis. He also underwent a right ankle MRI scan of even date which demonstrated a chronic sprain/partial tear of the anterior talofibular ligament, tenosynovitis, chondromalacia, and plantar fasciitis.

On November 27, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work for the period October 2 through November 6, 2020. By decision dated December 1, 2020, OWCP accepted an additional recurrence of disability effective October 2, 2020 and authorized wage-loss compensation through November 6, 2020.

[3] OWCP subsequently accepted, under OWCP File No. xxxxxx897, that on January 20, 2015 appellant sustained a tear of the medial meniscus of the left knee, and a temporary aggravation of bilateral lower leg osteoarthritis due to his employment duties of climbing in and out of his vehicle and twisting and turning to deliver mail. Additionally, under OWCP File No. xxxxxx394, OWCP accepted that beginning on October 2, 2018, he sustained a temporary aggravation of left hip osteoarthritis due to his employment duties. On January 14, 2019 OWCP denied appellant's May 13, 2011 traumatic injury claim alleging work-related left hip and leg pain after exiting his work vehicle under OWCP File No. xxxxxx409. OWCP has administratively combined appellant's claims, with the present claim, OWCP File No. xxxxxx066, serving as the master file.

In a January 25, 2021 report, Dr. Neil Allen, a Board-certified internist, performed a physical examination finding bilateral foot pain, widespread foot tenderness to palpation, and an antalgic gait pattern. He reviewed the September 22, 2020 MRI scans and diagnosed bilateral calcaneal spurs and bilateral gait abnormality. Dr. Allen found that appellant had reached maximum medical improvement (MMI). Utilizing the diagnosis-based impairment (DBI) methodology under Table 16-2, page 501 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[4] he found that appellant had two percent permanent impairment of both lower extremities. For each lower extremity, Dr. Allen assigned a Class 1, grade C impairment with a default value of one percent impairment for the class of diagnosis (CDX) of soft tissue including plantar fasciitis with significant consistent palpatory findings. He found a grade modifier for functional history (GMFH) of 2 bilaterally, a grade modifier for physical examination (GMPE) of 2 bilaterally, a grade modifier for clinical studies (GMCS) of 2 for the right lower extremity, and a GMCS of 1 for the left lower extremity. Dr. Allen calculated a +3 grade modifier adjustment under the net adjustment formula[5] for the right lower extremity, and +2 for the left lower extremity which resulted in a grade E or two percent permanent impairment of each lower extremity.

On February 2, May 4, and August 18, 2021 Dr. Malcolm D. Herzog, a podiatrist, diagnosed bilateral calcaneal spurs, abnormality of gait, bilateral bursitis tenosynovitis, bilateral plantar fasciitis, and a plantar-flexed fourth metatarsal bone of the left foot. He described appellant's job duties and opined that he had injured himself while working. Dr. Herzog found that he continued to experience symptoms of his accepted employment injury.

On April 30, 2021 appellant filed a claim for compensation (Form CA-7), requesting a schedule award.

In an August 22, 2021 report, Dr. James W. Butler, a physician Board-certified in occupational medicine serving as district medical adviser (DMA), found that appellant had reached MMI, and agreed with the impairment rating of two percent permanent impairment of each lower extremity due to soft tissue injuries.

On October 13, 2021 OWCP requested clarification from the DMA.

In a November 1, 2021 supplemental report, Dr. Butler noted that OWCP had not provided him with additional medical evidence for review. On November 24, 2021 OWCP again requested clarification. On December 4, 2021 the DMA reviewed Dr. Allen's impairment ratings for additional conditions in the combined claims and requested further development of the medical evidence regarding the left lower extremity impairments of arthritis noting that impairment for range of motion alone was not appropriate according to page 497 of the A.M.A., *Guides*. He maintained that appellant had two percent permanent impairment of the right lower extremity in keeping with his August 22, 2021 report.

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

[5] (GMFH - CDX) (2-1) + (GMPE - CDX) (2-1) + (GMCS - CDX) (1-1) equals 2 net adjustment.

On January 10, 2022 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. Hythem P. Shadid, a Board-certified orthopedic surgeon, for a second opinion evaluation. It listed the accepted conditions as aggravation of bilateral calcaneal spurs, tear of the medial meniscus of the left knee, temporary aggravation of bilateral lower leg osteoarthritis, and temporary aggravation of left hip osteoarthritis. OWCP requested that Dr. Shadid provide an impairment rating using the sixth edition of the A.M.A., *Guides*, address the date of MMI, and specify the diagnosis upon which he based his impairment rating.

In a February 21, 2022 report, Dr. Shadid reviewed the diagnosed condition of aggravation of bilateral calcaneal spurs, the SOAF, and medical record. He discussed the multiple findings demonstrated on an MRI scan of the right ankle performed on September 22, 2022, including plantar fasciitis of the central band of the plantar fascia measuring five millimeters in thickness. Dr. Shadid opined that there were no objective findings on physical examination including no antalgic gait and no tenderness to palpation of the feet to support that appellant's current bilateral heel pain with prolonged walking and standing was secondary to a diagnosis of bilateral plantar fasciitis otherwise referred to as aggravation of bilateral calcaneal spurs. Instead, he found that appellant's foot pain was more likely than not due to his weight. Dr. Shadid asserted that appellant's bilateral plantar fasciitis/aggravation of calcaneal spurs had objectively resolved as of his recent MRI scans of his right foot and ankle, which failed to demonstrate inflammation at the bone spur, which was the origin of the plantar fascia. He further found that there were no findings consistent with an active aggravation of the plantar fascia in either foot. Dr. Shadid opined that appellant had reached MMI and that this was established by his refusal for either injection therapy or surgical intervention. Applying the DBI methodology, he found Class 0 impairment for plantar fasciitis using Table 16-2 on page 501 of the A.M.A., *Guides*, due to no significant objective abnormal findings on examination or radiographic studies. Dr. Shadid found that the GMFH was 1 due to a mild deficit as appellant had bilateral heel pain with prolonged standing or walking, the GMPE was 0 due to no consistent findings, and the GMCS was 0 based on no relevant findings. He found that appellant had no permanent impairment of his lower extremities due to this accepted condition.

On April 7, 2022 OWCP proposed to terminate appellant's medical benefits due to his accepted May 27, 2007 employment injury. It provided him 30 days to submit additional evidence or argument if he disagreed with the proposed termination. OWCP further proposed to deny appellant's claim for a schedule award.

In a May 5, 2022 response, counsel contended that Dr. Shadid did not review all of appellant's accepted lower extremity conditions as listed on the SOAF in formulating his impairment rating. She further asserted that Dr. Shadid's opinion differed from those of Drs. Allen and Herzog, such that a conflict was created.

On May 16, 2022 Dr. Allen provided an addendum to his January 25, 2021 report. He agreed with the DMA's impairment rating due to appellant's bilateral calcaneal spur. Dr. Allen also resubmitted his impairment ratings due to the accepted tear of the medial meniscus of the left knee, temporary aggravation of bilateral lower leg osteoarthritis, and temporary aggravation of left hip osteoarthritis.

In a June 7, 2022 report, Dr. Herzog reviewed the May 15, 2014 and September 22, 2020 MRI scans and found plantar fasciitis of the central band of the plantar fascia. He diagnosed bilateral calcaneal spurs and bilateral gait abnormality.

By decision dated July 14, 2022, OWCP terminated appellant's medical benefits, effective that date, for the accepted condition of an aggravation of bilateral calcaneal spurs, finding that the medical evidence of record established that his work-related conditions had ceased. It also denied his schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body.

On August 11, 2022 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a September 21, 2022 report, Dr. Herzog continued to diagnosed plantar fasciitis and to provide medical treatment.

By decision dated December 27, 2022, OWCP's hearing representative affirmed the July 14, 2022 decision.

## ***LEGAL PRECEDENT -- ISSUE 1***

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.[6] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[7] To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition, which require further medical treatment.[8]

## ***ANALYSIS -- ISSUE 1***

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's medical benefits effective July 14, 2022.

OWCP relied upon the report of Dr. Shadid, the second opinion physician, to find that appellant had no continuing residuals of his accepted conditions of bilateral calcaneal spurs in terminating his medical benefits. Dr. Shadid opined that appellant did not exhibit objective findings to document bilateral calcaneal spurs/bilateral plantar fasciitis. He noted that a review of the September 20, 2020 MRI scans confirmed that appellant had no medical residuals of the accepted July 7, 2015 employment injury. The Board finds that this report is insufficient to constitute the weight of the medical evidence as it is internally inconsistent. Dr. Shadid opined that diagnoses of bilateral calcaneal spurs and bilateral plantar fasciitis were interchangeable but

[6] *S.A.*, Docket No. 20-1168 (issued March 29, 2023); *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[7] *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[8] *L.M.*, Docket No. 22-0342 (issued August 25, 2023); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

found that the diagnosis of plantar fasciitis listed on the September 20, 2020 MRI scan was not objective evidence of the accepted employment-related condition. He provided no explanation for these varying findings. Dr. Shadid provided an inconsistent opinion regarding whether appellant continued to experience medical residuals or whether accepted condition had resolved. The Board has held that medical reports are of limited probative value if they are inconsistent.[9]

The Board finds that Dr. Shadid's February 21, 2022 report is of diminished probative value in establishing that appellant's accepted condition had resolved.[10] Accordingly, the Board finds that OWCP failed to meet its burden of proof to terminate appellant's medical benefits.[11]

## ***LEGAL PRECEDENT -- ISSUE 3***

The schedule award provisions of FECA,[12] and its implementing federal regulations,[13] 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. FECA, however, does not specify the way the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.[14] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[15]

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): A Contemporary Model of Disablement*.[16] Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by a GMFH, a GMPE, and/or a

[9] *See J.C.*, Docket No. 22-0731 (issued November 29, 2022); *T.N.*, Docket No. 22-0721 (issued September 14, 2022); *S.H.*, Docket No. 19-0631 (issued September 5, 2019); *L.L.*, Docket No. 18-0861 (issued April 5, 2019).

[10] *J.C.*, *id.*; *G.Y.*, Docket No. 19-1683 (issued March 16, 2021); *S.R.*, Docket No. 19-1229 (issued May 15, 2020).

[11] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

[12] *Supra* note 2.

[13] 20 C.F.R. § 10.404.

[14] For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[15] *S.J.*, Docket No. 22-0714 (issued March 31, 2023); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[16] A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3.

GMCS.[17] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[18] Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[19]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[20]

Section 8123(a) of FECA provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[21] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[22]

## ***ANALYSIS -- ISSUE 3***

The Board finds this case is not in posture for a decision regarding appellant's schedule award claim.

In January 25, 2021 and May 16, 2022 reports, Dr. Allen reported findings on physical examination that included bilateral foot pain, widespread foot tenderness to palpation, and antalgic gait pattern. He also reviewed the September 22, 2020 MRI scans and diagnosed bilateral calcaneal spurs. Utilizing the DBI methodology of the sixth edition of the A.M.A., *Guides*, Dr. Allen assigned a Class 1, grade C impairment with a default value of one percent impairment for the CDX of plantar fasciitis with significant consistent palpatory findings using Table 16-2, the Foot and Ankle Grid, on page 501. He applied the net adjustment formula and reached two percent permanent impairment of each lower extremity.

In August 22, and December 4, 2021 reports, Dr. Butler, OWCP's DMA, opined that appellant had two percent permanent impairment of the right lower extremity. He utilized the DBI rating method under the sixth edition of the A.M.A., *Guides* and identified the CDX as a Class 1 impairment for the diagnosis of plantar fasciitis under Table 16-2 on page 501.

[17] *Id*. at 494-531.

[18] *Id*. at 411.

[19] *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

[20] *Supra* note 14 at Chapter 2.808.6f. *See also J.T.*, Docket No. 17-1465 (issued September 25, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

[21] 5 U.S.C. § 8123(a).

[22] 20 C.F.R. § 10.321; *see V.B.*, Docket No. 19-1745 (issued February 25, 2021); *K.C.*, Docket No. 19-1251 (issued January 24, 2020); *R.C.*, 58 ECAB 238 (2006).

In contrast, Dr. Shadid, the second opinion physician, determined in a February 21, 2022 report that appellant had no ratable impairment of the lower extremities. He found no antalgic gait, no tenderness to palpation, and no positive employment-related findings on the September 22, 2020 MRI scans. Dr. Shadid utilized the DBI method of the sixth edition of the A.M.A., *Guides*, to find no permanent impairment of the lower extremities.

The Board thus finds that there is a conflict in the medical opinion evidence between the opinion of Dr. Allen, appellant's attending physician, and Dr. Shadid, OWCP's second opinion physician regarding the nature and extent of appellant's lower extremity permanent impairment.

Because there remains an unresolved conflict in the medical opinion evidence regarding appellant's lower extremity permanent impairment, pursuant to 5 U.S.C. § 8123(a), the case will be remanded to OWCP for referral of appellant, together with the case record and a SOAF, to a specialist in the appropriate field of medicine for an impartial medical examination to resolve the conflict.[23] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's permanent impairment.

## ***CONCLUSION***

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's medical benefits, effective July 14, 2022. The Board further finds this case is not in posture for a decision regarding appellant's schedule award claim.

[23] *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 27, 2022 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part; the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 15, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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