

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

D.B., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, SYRACUSE-HANCOCK)
INTERNATIONAL AIRPORT,)
North Syracuse, NY, Employer)

**Docket No. 24-0168
Issued: April 19, 2024**

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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 12, 2023 appellant filed a timely appeal from an October 17, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has met her burden of proof to establish greater than 10 percent permanent impairment of the right lower extremity (the leg), for which she previously received a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 28, 2021 appellant, then a 55-year-old personnel manager, filed a traumatic injury claim (Form CA-1) alleging that on October 27, 2021 she sustained multiple fractures of her right ankle and lower leg when she twisted her ankle, slipped, and fell in a parking garage while in the performance of duty. She stopped work on that day. OWCP accepted the claim for a displaced closed trimalleolar fracture of the right lower leg, later expanding the acceptance of the claim to include an acute embolism and thrombosis of unspecified deep veins of the right lower extremity. On November 2, 2021 appellant underwent right ankle reduction and internal fixation with medial and lateral malleolar fixation. OWCP paid her wage-loss compensation on the supplemental rolls from December 15, 2021 through August 11, 2022.

In a report dated November 15, 2022, Dr. Frederick Lemley, a Board-certified orthopedic surgeon, examined appellant to rate her right lower extremity permanent impairment. He diagnosed right ankle injury and status post right ankle open reduction and internal fixation. On physical examination of the right foot and ankle, Dr. Lemley observed healed scars, natural alignment, smooth motion in the hindfoot, no instability of the ankle, and no tenderness of the Achilles heel. Appellant stated that she had difficulty with aching, throbbing, stiffness, lateral pain, and numbness in the small and fourth toes. Dr. Lemley noted that appellant's symptoms could be related to the hardware placement, however appellant did not want to undergo further surgery to remove the hardware. He obtained three sets of range of motion (ROM) measurements for appellant's ankles. Appellant's right side reflected measurements in degrees of: 7, 8, and 8 for dorsiflexion; 30, 30, and 30 for plantar flexion; 25, 25, and 25 for inversion; and 20, 20, 20 for eversion. He calculated that her loss of ROM for dorsiflexion and plantar flexion amounted to 22.5 percent permanent impairment, and that her loss of range of motion (ROM) for inversion and eversion amounted to 7.5 percent permanent impairment, for a total of 30 percent permanent impairment of the right foot.

On May 10, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On September 1, 2023 OWCP routed the case record and a SOAF to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA).

In a report dated September 15, 2023, Dr. Hammel reviewed the SOAF and medical record, including the November 15, 2022 report from Dr. Lemley. He opined that appellant reached maximum medical improvement (MMI) on the date of Dr. Lemley's impairment evaluation. The DMA disagreed with Dr. Lemley's impairment rating, noting that he used isolated ROM measurements for the lower extremity, which was not the favored methodology for rating lower extremity permanent impairment pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² He explained that the sixth edition of the A.M.A., *Guides* only allowed for lower extremity standalone range of motion-based impairment ratings in the setting of severe organic motion loss not ascribable to a specific diagnosis-based impairment (DBI), which was not the setting of appellant's accepted

² A.M.A., *Guides* (6th ed. 2009).

conditions. Dr. Hammel noted that no calculations were shown and the DBI rating method was not used. Referring to Table 16-2 of the A.M.A., *Guides*, Dr. Hammel noted that the class of diagnosis (CDX) for a trimalleolar fracture with mild motion deficits would be a Class 1, grade C impairment, with a default rating of 10 percent. He assigned a grade modifier for functional history (GMFH) of 1 for continued pain, and stated that a grade modifier for physical examination (GMPE) and a grade modifier for clinical studies (GMCS) were not applicable. The net adjustment modifier was 0, and thus, the DMA concluded that appellant had 10 percent permanent impairment of the right lower extremity.

By decision dated October 17, 2023, OWCP granted appellant a schedule award for 10 percent permanent impairment of the right lower leg. The period of the award ran for 28.8 weeks and a fraction of a day from October 15, 2022 through June 4, 2023.

LEGAL PRECEDENT

The schedule award provisions of FECA,³ and its implementing federal regulations,⁴ 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 manner in which 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 under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants and the Board has concurred in such adoption.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.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): A Contemporary Model of Disablement*.⁷ Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by a GMFH, a GMPE, and/or a GMCS.⁸ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁹ Evaluators

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a); *see R.M.*, Docket No. 20-1278 (issued May 4, 2022); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁶ 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 3.700.2 and Exhibit 1 (January 2010).

⁷ A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3.

⁸ *Id.* at 494-531.

⁹ *Id.* at 521.

are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹⁰

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the percentage of permanent impairment using the A.M.A., *Guides*.¹¹

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 (the leg), for which she previously received a schedule award.

On November 15, 2022 Dr. Lemley examined appellant to rate her right lower extremity permanent impairment. He diagnosed right ankle injury and status post right ankle open reduction and internal fixation. Dr. Lemley obtained range of motion measurements in degrees for her bilateral ankles. He calculated that her loss of ROM for dorsiflexion and plantar flexion amounted to 22.5 percent permanent impairment, and that her loss of ROM for inversion and eversion amounted to 7.5 percent permanent impairment, for a total of 30 percent permanent impairment of the right foot.

On September 15, 2023 Dr. Hammel reviewed the November 15, 2022 report from Dr. Lemley. He opined that MMI was reached on the date of Dr. Lemley's impairment evaluation. The DMA disagreed with Dr. Lemley's permanent impairment rating. He explained that the sixth edition of the A.M.A., *Guides* only allowed for lower extremity standalone ROM-based impairment ratings in the setting of severe organic motion loss not ascribable to a specific DBI, which did not apply to appellant's accepted conditions. The DMA thereafter rated appellant's permanent impairment utilizing DBI methodology. Referring to Table 16-2 of the A.M.A., *Guides*, Dr. Hammel noted that a CDX for trimalleolar fracture with mild motion deficits was a Class 1, grade C, default impairment of 10 percent. He assigned a GMFH of 1 for continued pain and stated that the GMPE and GMCS were not applicable. The net adjustment modifier was 0, and thus, the DMA concluded that appellant had 10 percent permanent impairment of the right lower extremity.

The Board finds that OWCP properly relied upon the opinion of Dr. Hammel, serving as the DMA, as he appropriately applied the DBI methodology found in the sixth edition of the A.M.A., *Guides* in determining that appellant had 10 percent permanent impairment of the right lower extremity. Dr. Hammel properly explained that the ROM methodology was not the appropriate methodology for rating appellant's right foot permanent impairment, and he further explained that Dr. Lemley had not rated appellant's permanent impairment utilizing DBI methodology.

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

¹¹ *A.C.*, Docket No. 19-1333 (issued January 8, 2020); *B.B.*, Docket No. 18-0782 (issued January 11, 2019); *supra* note 6 at Chapter 2.808.6f (March 2017).

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

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 permanent 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 (the leg), for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 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