

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

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<b>A.G., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0850</b>
	)	<b>Issued: December 3, 2024</b>
<b>U.S. POSTAL SERVICE, OAKLAND</b>	)	
<b>PROCESSING &amp; DISTRIBUTION CENTER,</b>	)	
<b>Oakland, CA, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On August 16, 2024 appellant filed a timely appeal from a June 12, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 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 17, 2023 appellant, then an 82-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on August 7, 2023 he injured his right leg when an over-the-road

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

container struck him while in the performance of duty. He stopped work on August 12, 2023. OWCP accepted the claim for contusion of the right ankle and strain of the right Achilles tendon.

In work status reports dated August 14 and 18, 2023, Dr. Navdeep Singh, a Board-certified pulmonologist, noted that appellant was held off work from August 14 through 20, and August 21 through September 3, 2023.

Dr. Tiffany Baer, a Board-certified internist, treated appellant on August 25 and September 14, 2023 for a right ankle injury that occurred on August 7, 2023 when he was hit by an object while at work. She noted that appellant presented with a limp, a healing closed laceration along the Achilles tendon, and fair range of motion of the right ankle. An x-ray of the right ankle dated August 15, 2023 revealed no acute fracture of the right ankle and findings suggestive of Achilles tendinopathy. Dr. Baer diagnosed right ankle contusion and right Achilles tendon strain and referred appellant for physical therapy. She noted appellant was totally disabled from August 25 through September 13, 2023 and could return to a sedentary position on September 14, 2023. In form reports dated August 25 and September 14, 2023, Dr. Baer noted a history of injury and diagnosed right ankle contusion and right Achilles tendon strain. She noted that appellant was totally disabled from August 25 through September 13, 2023 and could return to modified sedentary duty on September 14, 2023. In a work status report dated September 14, 2023, Dr. Baer diagnosed right ankle contusion, right Achilles tendon strain and released appellant to modified sedentary work. On October 26, 2023 she diagnosed right ankle contusion and right Achilles tendon strain. Dr. Baer opined that appellant was healing as expected and no further treatment was required. She noted that appellant reached maximum medical improvement (MMI) and was permanent and stationary. Dr. Baer discharged appellant from care and released him to full-duty work. She further noted that appellant had no permanent impairment pursuant to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>2</sup>. In a form report dated October 26, 2023, Dr. Baer noted a history of injury on August 7, 2023 and diagnosed right ankle contusion and right Achilles tendon strain. She noted that appellant was healing as expected and no further treatment was required. Dr. Baer discharged appellant from care and released him to full-duty work. She further noted that appellant had no permanent impairment pursuant to the sixth edition of the A.M.A., *Guides*.<sup>3</sup>

On January 16, 2024 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a January 24, 2024 development letter, OWCP requested that appellant submit an impairment evaluation addressing whether he had reached MMI and provide an impairment rating using the sixth edition of the A.M.A., *Guides*. It indicated that, to date, no medical evidence had been received in support of his claim for a schedule award. OWCP advised that, if appellant's physician was unable or unwilling to provide the required report to notify OWCP in writing and if his case met the essential elements for a schedule award claim (work-related permanent condition and a schedule member) and the medical evidence was not sufficient to determine permanent

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<sup>2</sup> A.M.A. *Guides* (5<sup>th</sup> ed. 2001).

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

impairment, he would be scheduled to be seen by a second opinion specialist. It afforded him 30 days to submit additional medical evidence in support of his schedule award claim. OWCP noted that, if the requested medical evidence was not received within 30 days from the date of the letter, a decision may be made based on the evidence in the file.

OWCP subsequently received additional evidence. Appellant submitted a form report dated August 25, 2023 and a form report dated October 26, 2023 from Dr. Baer, both previously of record.

By decision dated June 12, 2024, OWCP denied appellant's 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, warranting a schedule award.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>4</sup> and its implementing regulations<sup>5</sup> 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 of loss of a member 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 and the Board has concurred in such adoption.<sup>6</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.<sup>7</sup>

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's *International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement*.<sup>8</sup> Under the sixth edition, for lower extremity impairments, the evaluator identifies the impairment of the class of diagnosis (CDX), which is then adjusted by a grade modifier for functional history (GMFH), grade modifier for physical examination (GMPE), and grade modifier for clinical studies (GMCS).<sup>9</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>10</sup>

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.* at § 10.404(a); *see also T.T.*, Docket No. 24-0079 (issued April 1, 2024); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>8</sup> A.M.A., *Guides*, page 3, section 1.3.

<sup>9</sup> *Id.* at 493-556.

<sup>10</sup> *Id.* at 521.

Neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.<sup>11</sup> Furthermore, the back is specifically excluded from the definition of an organ under FECA.<sup>12</sup> The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*), offer an approach to rating spinal nerve impairments consistent with sixth edition methodology. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures indicate that the July/August 2009 edition of *The Guides Newsletter* is to be applied.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

In an October 26, 2023 report, Dr. Baer noted that appellant was healing as expected and no further treatment was required. Further, she addressed MMI, opining that appellant reached MMI and was permanent and stationary. Dr. Baer diagnosed right ankle contusion and right Achilles tendon strain and released him to full-duty work. She opined that appellant had no permanent impairment pursuant to the sixth edition of the A.M.A., *Guides*. Therefore, Dr. Baer's report is insufficient to establish appellant's schedule award claim.<sup>14</sup>

As the medical evidence of record is insufficient to establish permanent impairment of a scheduled member or function of the body, the Board finds that appellant has not met his burden of proof.<sup>15</sup>

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.

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<sup>11</sup> 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); see *T.T., id.*; *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

<sup>12</sup> See *id.* at § 8101(19); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

<sup>13</sup> *Supra* note 8 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

<sup>14</sup> See *M.G.*, Docket No. 19-0823 (issued September 17, 2019).

<sup>15</sup> See *E.D.*, Docket No. 19-1562 (issued March 3, 2020); *I.R.*, Docket No. 16-1796 (issued January 13, 2017); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 12, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2024  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board