United States Department of Labor
Employees' Compensation Appeals Board

P.E., Appellant	)	
and	)	**Docket No. 25-0023**
	)	**Issued: November 12, 2024**
U.S. POSTAL SERVICE, POST OFFICE, Canal Winchester, OH, Employer	)	

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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On October 11, 2024 appellant filed a timely appeal from a June 4, 2024 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 has met her burden of proof to establish greater than 10 percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the June 4, 2024 decision, OWCP received additional evidence. 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 additional evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On July 6, 2019 appellant, then a 58-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured both her ankles when she stepped off a curb while in the performance of duty. She underwent surgeries to the left ankle by Dr. Jonathan B. Feibel, a Board-certified orthopedic surgeon, including left open reduction and internal fixation of the left distal fibula on July 19, 2019 and removal of painful hardware on March 12, 2020. OWCP accepted the claim for displaced spiral closed fracture of shaft of left fibula; nondisplaced closed fracture of lateral malleolus of right fibula; greater trochanteric bursitis of the left hip; synovitis and tenosynovitis of the left ankle and foot; pain due to internal orthopedic prosthetic devices, implants and grafts; and primary osteoarthritis of the left ankle and foot. Appellant stopped work on July 7, 2019 but then returned to part-time modified-duty work on June 30, 2020 and to full-time modified-duty work on August 5, 2020.[3] OWCP paid her wage-loss compensation on the supplemental rolls from August 21 through December 7, 2019 and on the periodic rolls, effective December 8, 2019.

An October 27, 2020 magnetic resonance imaging (MRI) scan of the left ankle demonstrated chronic appearing deformity and post-traumatic and postsurgical change of the distal fibula; patchy bone marrow edema in the body and neck of the talus suspicious for a mild stress response; mild degenerative change involving the ankle and midfoot including the tibiotalar joint and posterior facet of the subtalar joint; and a small amount of fluid along the peroneal tendons and posterior tibialis tendon.

On May 11, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By letter dated May 15, 2023, OWCP advised appellant of the evidence necessary to establish an entitlement to a schedule award under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[4]

OWCP thereafter received an April 24, 2023 medical report by Dr. Feibel, who noted that appellant related ongoing complaints of bilateral ankle pain. Dr. Feibel performed a physical examination, which revealed pain over the ankle and subtalar joints, bilaterally. He also documented that appellant had no instability in either ankle and had intact motor strength and physiologic range of motion (ROM), bilaterally. Dr. Feibel diagnosed primary osteoarthritis of the left ankle and foot and chronic left ankle and subtalar degenerative joint disease with exacerbation of pain. He administered a Kenalog injection into the left ankle and subtalar joints and noted that appellant was scheduled to undergo an injection to the right ankle two weeks later.

By decision dated November 3, 2023, OWCP denied appellant's schedule award claim.

OWCP continued to receive evidence, including a February 13, 2024 report by Dr. Feibel, who diagnosed displaced spiral fracture of the shaft of the left fibula, nondisplaced fracture of the lateral malleolus of the right fibula, other synovitis and tenosynovitis of the left ankle and foot,

[3] Appellant retired from federal service on March 31, 2023.

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

pain due to internal orthopedic prosthetic device/graft, and primary osteoarthritis of the left ankle and foot. Dr. Feibel opined that appellant "sustained permanent impairments due to the above injuries," and that she had reached maximum medical improvement (MMI). He indicated that she was "requesting a schedule award and will need to seek a second opinion from a physician who does impairment ratings based on the [6th edition AMA guidelines] as this is not a service I offer."

On February 26, 2024 appellant requested reconsideration of OWCP's November 3, 2023 decision.

On April 8, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Gerald Rosenberg, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a report dated May 7, 2024, Dr. Rosenberg reviewed the SOAF and medical record and related appellant's complaints of mild-to-moderate symptoms in her ankles. He noted that she received conservative treatment for the right ankle without complications and had undergone two surgeries to the left ankle. On physical examination of the lower extremities, Dr. Rosenberg observed normal alignment, gait, appearance, and strength. He recorded maximum ROM measurements of the left ankle of 40 degrees flexion, 10 degrees extension, 30 degrees inversion, and 20 degrees inversion. For the right ankle, Dr. Rosenberg recorded maximum ROM measurements of 40 degrees flexion, 10 degrees extension, 50 degrees inversion, and 10 degrees inversion. He indicated that the decreased inversion of the right ankle was not attributable to the work injury, that there was no clinical evidence of tenosynovitis about the left ankle or foot, and that her left hip was unremarkable. Dr. Rosenberg opined that appellant reached MMI as of June 12, 2020, three months after the hardware removal in the left ankle. He found that she had a mild, permanent impairment of arthritis of the left ankle and no permanent impairment of the right ankle or left hip. Dr. Rosenberg referred to the sixth edition of the A.M.A., *Guides*, Table 16-22 (Ankle Motion Impairment), page 549, and found that appellant had 10 percent left lower extremity impairment using the ROM impairment rating method.

On May 23, 2024 OWCP referred the case record and a SOAF to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for a review and rating of appellant's permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*.

In a report dated May 31, 2024, Dr. Hammel reviewed the SOAF and medical record, including the May 7, 2024 report from Dr. Rosenberg. He opined that appellant reached MMI on May 7, 2024, the date of Dr. Rosenberg's evaluation. Dr. Hammel disagreed with Dr. Rosenberg's use of the ROM impairment rating method, noting 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 diagnosis-based impairment (DBI), which was not applicable in this case. Referring to Table 16-2 of the A.M.A., *Guides*, he noted that the class of diagnosis (CDX) for ankle fracture with mild motion loss would be a Class 1, grade C impairment, with a default rating of 10 percent. Dr. Hammel 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 as the physical examination and clinical studies were used to establish the diagnosis and proper

placement in the regional grid. The net adjustment modifier was 0, and thus, he concluded that appellant had 10 percent permanent impairment of the left lower extremity.

By decision dated June 3, 2024, OWCP vacated its November 3, 2023 decision.

By decision dated June 4, 2024, OWCP granted appellant a schedule award for 10 percent permanent impairment of the left lower extremity. The award ran for 28.8 weeks from May 7 through November 24, 2024.

LEGAL PRECEDENT

The schedule award provisions of FECA[5] and its implementing regulations[6] 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. OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants. As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

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*.[8] Under the sixth edition, for lower extremity impairments, the evaluator identifies the impairment of the CDX, which is then adjusted by a GMFH, a GMPE, and/or a GMCS.[9] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10] Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[11]

OWCP's 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.[12]

[5] *Supra* note 1.

[6] 20 C.F.R. § 10.404.

[7] 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).

[8] A.M.A., *Guides*, page 3, section 1.3.

[9] *Id*. at 493-556.

[10] *Id*. at 521.

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

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

ANALYSIS

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

In accordance with its procedures, OWCP properly referred the evidence of record to Dr. Rosenberg for a second opinion examination and permanent impairment evaluation. On May 7, 2024 Dr. Rosenberg examined appellant to rate her left lower extremity permanent impairment. He obtained ROM measurements in degrees for her bilateral ankles and calculated a 10 percent permanent impairment of the left foot under the ROM impairment rating method.

On May 31, 2024 Dr. Hammel reviewed the May 7, 2024 report from Dr. Rosenberg. He opined that MMI was reached on the date of Dr. Rosenberg's impairment evaluation. Dr. Hammel disagreed with Dr. Rosenberg's use of the ROM impairment rating method for evaluation of appellant's permanent impairment. 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. Dr. Hammel thereafter rated appellant's permanent impairment utilizing the DBI methodology. Referring to Table 16-2 of the A.M.A., *Guides*, he noted that a CDX for ankle fracture with mild motion deficits was a Class 1, grade C, default impairment of 10 percent. Dr. Hammel 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, he concluded that appellant had 10 percent permanent impairment of the left 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 left lower extremity. Dr. Hammel also properly explained that the ROM methodology was not the appropriate methodology for rating her left foot permanent impairment.[13]

As the medical evidence of record is insufficient to establish greater than the 10 percent permanent impairment of the left lower extremity previously awarded, the Board finds that appellant has not met her burden of proof.[14]

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.

[13] *See D.B.*, Docket No. 24-0168 (issued April 19, 2024).

[14] *See P.S.*, Docket No. 22-1051 (issued May 4, 2023); *M.H.*, Docket No. 20-1109 (issued September 27, 2021); *R.H.*, Docket No. 20-1472 (issued March 15, 2021); *L.D.*, Docket No. 19-0495 (issued February 5, 2020).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board