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

| | | |
|---|---|---|
| **V.C., Appellant** | ) | |
| **and** | ) | **Docket No. 19-0545** |
| | ) | **Issued: May 14, 2020** |
| **U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, 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, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On January 2, 2019 appellant filed a timely appeal from an August 15, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] The Board notes that following the August 15, 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 additional evidence for the first time on appeal. *Id.*

[2] 5 U.S.C. § 8101 *et seq.*

## ***ISSUE***

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

## ***FACTUAL HISTORY***

On May 3, 1996 appellant, then a 34-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on May 2, 1996 she struck her left knee with the door of her vehicle while in the performance of duty. OWCP accepted the claim for left knee strain. Appellant stopped work on May 3, 1996 and returned to full-duty work on July 10, 1996. On March 25, 1997 she underwent an arthroscopic excision of plica and a partial synovectomy. Appellant was removed from federal service as of November 14, 1997 for cause.

In a report dated November 10, 1997, Dr. Edward Feldman, an orthopedic surgeon, noted that he was treating appellant for a May 2, 1996 employment injury to her knee. He advised that she had undergone an arthroscopic procedure to the left knee that had resulted in degenerative osteoarthritis and quadriceps atrophy. Dr. Feldman opined that, under the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[3], appellant had 15 percent permanent impairment of the left lower extremity as a result of the procedure and her employment-related injury.

On November 26, 1997 appellant filed a claim for a schedule award (Form CA-7).

In a report dated February 12, 1998, Dr. Robert Henderson, a Board-certified orthopedic surgeon, opined that appellant had reached maximum medical improvement (MMI). He found that she had 15 percent permanent impairment of the left lower extremity due to patellofemoral irregularities.

On March 4, 1998 OWCP referred appellant to Dr. Joel Scholten, a Board-certified physiatrist, for a second opinion examination regarding the nature and extent of her current condition and any related disability from employment. It further requested that he determine whether she had reached MMI and rate the extent of any permanent impairment.

In a report dated March 20, 1998, Dr. Scholten discussed appellant's complaints of right knee pain radiating into the right medial leg and numbness and tingling into the toes. On examination of the lumbar spine, he observed full lumbar range of motion (ROM), deep tendon reflexes at 2+ and symmetric in the lower extremities, as well as strength at 5+, symmetric with hip flexion and extension. On examination of the left lower extremity, Dr. Scholten noted diminished pinprick sensation in the left saphenous nerve distribution, positive patellar apprehension with medial distraction, minimal crepitance, pain to palpation over the knee, and paresthesia. He measured ROM as full extension of the left knee and 130 degrees of flexion. Dr. Scholten diagnosed patellofemoral syndrome of the left knee, quadriceps atrophy, saphenous

[3] A.M.A., *Guides* (4th ed. 1993).

neuropathy, and pes anserine bursitis. He advised that appellant had not reached MMI, but estimated that she would reach MMI in two or three months.

In a report dated April 13, 1998, a district medical adviser (DMA) indicated that he could find no provision in the fourth edition A.M.A., *Guides* for rating an impairment due to irregularities.[4]

On October 2, 1998 a DMA noted that Dr. Scholten had not provided a date of MMI.[5]

By letter dated January 29, 2018, appellant again requested a schedule award.

On February 1, 2018 OWCP referred appellant's case to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a DMA.

In a report dated February 14, 2018, Dr. Katz reviewed a statement of accepted facts (SOAF) and the medical record. He initially opined that the impairment rating of Dr. Feldman could not be accepted as probative medical evidence for the purpose of recommending a schedule award, as he had failed to utilize the sixth edition of the A.M.A., *Guides*.[6] Using the examination of Dr. Scholten dated March 20, 1998, Dr. Katz calculated that appellant had four percent left lower extremity permanent impairment. Utilizing Table 16-3 on page 509 of the sixth edition of the A.M.A., *Guides*, the Knee Regional Grid, he identified the class of diagnosis (CDX) as class 1 bursitis with plica and consistent significant palpatory findings, which yielded a default impairment rating of one percent. He applied a grade modifier for physical examination (GMPE) of one. Dr. Katz concluded that the impairment class was not altered by grade modification and found, therefore, that appellant had one percent permanent impairment of the left lower extremity due to bursitis. He further found a class 1 impairment due to a sensory deficit of the saphenous nerve pursuant to Table 16-12 on page 534 of the A.M.A., *Guides*, which yielded a default impairment rating of three percent. Dr. Katz applied a grade modifier for functional history (GMFH) of one, to find no change to the impairment class and a three percent left lower extremity impairment due to sensory deficit of the saphenous nerve. He combined the one percent impairment for the bursitis and the three percent impairment due to the sensory deficit of the saphenous nerve to find four percent left lower extremity permanent impairment. Dr. Katz noted that the A.M.A., *Guides* provided that impairment could not be rated using ROM. He found that appellant had reached MMI on March 20, 1998, the date of Dr. Scholten's examination.

[4] By letter dated June 10, 1998, OWCP requested that Dr. Henderson respond to the DMA's comments. No response was received.

[5] By letter dated October 5, 1998, OWCP informed appellant that without a date of MMI, OWCP was unable to process her schedule award claim. On October 13, 1998 Dr. Scholten noted that he was no longer seeing private patients and that he was unable to determine appellant's date of MMI.

[6] A.M.A., *Guides* (6th ed. 2009). Dr. Katz indicated that he had reviewed a November 10, 1997 report from Dr. Henderson rather than Dr. Feldman; however, this appears to be a typographical error.

On June 13, 2018 OWCP referred appellant's case to Dr. Seth Jaffe, a Board-certified orthopedic surgeon.[7]

In a report dated July 6, 2018, Dr. Jaffe diagnosed status post left knee arthroscopy and chondromalacia of the left patella. He opined that appellant would have obtained MMI within three to six months after her March 25, 1997 surgery. Dr. Jaffe found that the only objective abnormality on examination was patellofemoral crepitation. He opined that appellant had "no impairment from the injury sustained as at the time of the injury and documentation there was no impairment of motion or diminished cartilage interval on x-rays. Any symptoms present today are the result of a degenerative problem that has occurred over time and is related to age."

On July 25, 2018 appellant filed another claim for a schedule award (Form CA-7).

By decision dated August 15, 2018, OWCP granted appellant a schedule award for four percent permanent impairment of the left lower extremity. The period of the award ran for 11.52 weeks from July 22 to October 10, 2018. OWCP noted that as appellant had received compensation for disability through July 22, 2018, the starting date of the schedule award payment had been adjusted to July 22, 2018.

## ***LEGAL PRECEDENT***

The schedule award provisions of FECA,[8] and its implementing federal regulation,[9] 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, 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.[10] The Board has approved the use by

[7] On March 14, 2018 OWCP referred appellant's case to Dr. John B. Bieltz, a Board-certified orthopedic surgeon, for determination of her percentage of permanent impairment. In a report dated April 5, 2018, Dr. Bieltz diagnosed left knee pain with patella chondromalacia and status post left knee arthroscopy and advised that she required no further treatment needed. In a record of a telephone conversation (Form CA-110) dated May 16, 2018, OWCP informed appellant that the April 5, 2018 report of Dr. Bieltz did not include a permanent impairment rating, and that she had inquired as to the status of the rating. On a June 7, 2018 Form CA-110 OWCP indicated that it had advised that it would schedule another second opinion appointment to obtain a rating of permanent impairment.

[8] *Supra* note 2.

[9] 20 C.F.R. § 10.404.

[10] 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 Award and Permanent Disability Claims*, Chapter 2.808.6 (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

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.[11]

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).[12] The sixth edition requires identifying the impairment CDX condition, which is then adjusted by grade modifiers based on GMFH, GMPE, and clinical studies (GMCS).[13] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[14]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[15]

## ***ANALYSIS***

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

In support of her schedule award claim, appellant submitted a report dated November 10, 1997 from Dr. Feldman, who found that she had reached MMI and had 15 percent permanent impairment of the left lower extremity pursuant to the fourth edition of the A.M.A., *Guides* due to patellofemoral irregularities. OWCP, however, currently uses the sixth edition of the A.M.A., *Guides* to calculate schedule awards. A medical opinion based on an incorrect edition of the A.M.A., *Guides* is of diminished probative value in determining the extent of permanent impairment.[16]

In a February 12, 1998 report, Dr. Henderson advised that appellant had 15 percent permanent impairment of the left lower extremity due to patellofemoral irregularities. However, he failed to reference the A.M.A., *Guides* or explain how he arrived at this impairment rating in accordance with the relevant standards of the A.M.A., *Guides*.[17] Thus, Dr. Henderson's report

[11] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[12] A.M.A., *Guides* (6th ed. 2009); p.3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[13] *Id.* at 411, 494-531.

[14] *Id.*

[15] *P.R.*, Docket No. 18-0022 (issued April 9, 2018); *supra* note 10 at Chapter 2.808.6f (March 2017).

[16] *R.B.*, Docket No. 17-1704 (issued April 3, 2018).

[17] *B.B.*, Docket No. 18-0782 (issued January 11, 2019); *James R Hill, Sr.*, 57 ECAB 583 (2006).

lacks the probative value necessary to determine appellant's permanent impairment for schedule award purposes.[18]

In a March 20, 1998 report, Dr. Scholten upon examination observed full lumbar ROM, deep tendon reflexes at 2+ and symmetric in the lower extremities, as well as strength at 5+, symmetric with hip flexion and extension. On examination of the left lower extremity, he noted diminished pinprick sensation in the left saphenous nerve distribution, positive patellar apprehension with medial distraction, minimal crepitance, pain to palpation over the knee, and paresthesia. Dr. Scholten measured ROM and full extension of the left knee to 130 degrees of flexion. He diagnosed patellofemoral syndrome of the left knee, quadriceps atrophy, saphenous neuropathy, and pes anserine bursitis.

In accordance with its procedures, OWCP referred the evidence of record to DMA Dr. Katz. Preliminarily, Dr. Katz noted that Dr. Feldman's 15 percent permanent impairment rating could not be accepted, because it did not reference the correct edition of the A.M.A., *Guides*. However, he applied the tables and provisions of the A.M.A., *Guides* to the clinical findings of Dr. Scholten. Utilizing the results of Dr. Scholten's examination on March 20, 1998, Dr. Katz found that appellant had one percent permanent impairment due to class 1 bursitis using Table 16-3 on page 509 of the A.M.A., *Guides*, and three percent impairment due to class 1 sensory deficit of the saphenous nerve. He applied a GMPE of one to the identified diagnosis of bursitis, and a GMFH one for the sensory deficit of the saphenous nerve, resulting in zero adjustment from the default values. Dr. Katz combined the impairment ratings to find four percent left lower extremity permanent impairment. He further determined that the date of MMI was March 20, 1998, the date of Dr. Scholten's examination.

The Board finds that Dr. Katz adequately explained how he arrived at his rating of permanent impairment by listing specific tables and pages in the A.M.A., *Guides*.[19] The Board also finds that he properly interpreted and applied the standards of the sixth edition of the A.M.A., *Guides* to conclude that appellant qualified for four percent permanent impairment of the left lower extremity. Dr. Katz' opinion, therefore, represents the weight of the medical evidence and supports that appellant does not have left lower extremity impairment greater than the four percent previously awarded.[20]

On appeal appellant contends that she has significant pain in her knees. However, there is no current medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that she has more than four percent permanent impairment of the left lower extremity. Accordingly, appellant has not established entitlement to schedule award compensation greater than that previously awarded.[21]

[18] *F.S.*, Docket No. 16-0783 (issued September 26, 2017).

[19] *See M.P.*, Docket No. 18-1298 (issued April 12, 2019).

[20] *See A.C.*, Docket No. 19-1333 (issued January 8, 2020); *R.R.*, Docket No. 19-1314 (issued January 3, 2020).

[21] *Id.*; *see also G.W.*, Docket No. 19-0430 (issued February 7, 2020).

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 more than four percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the August 15, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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