



## ISSUE

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

## FACTUAL HISTORY

On September 8, 2017 appellant, then a 50-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on September 6, 2017 she sustained left knee anterior cruciate ligament damage when she tripped over a string that was across a driveway while in the performance of duty. She stopped work on September 7, 2017. OWCP accepted the claim for left knee sprain. Appellant accepted a modified job offer and returned to work on December 4, 2017. OWCP expanded its acceptance of the claim on February 20, 2018 to include chondromalacia patellae of the left knee. On May 9, 2019 it further expanded its acceptance of the claim to include posterior cruciate tear and left knee medial meniscus tear.

On October 9, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated October 17, 2019, OWCP requested that appellant submit a detailed report from her treating physician which provided an impairment evaluation pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup> It specifically requested an opinion as to whether she had reached maximum medical improvement (MMI), a diagnosis upon which the impairment was based, a detailed description of objective findings and subjective complaints, and a detailed description of any permanent impairment under the applicable criteria and tables in the A.M.A., *Guides*.

In response, counsel submitted a November 6, 2019 medical report from Dr. Neil Allen, a Board-certified internist and neurologist. On physical examination, he observed grade 1+ edema over the left joint and lower leg, crepitus with range of motion without assistance, and tenderness over the proximal third of the tibia. Dr. Allen performed three measurements of the left knee active range of motion (ROM) from minus 11 to 120 degrees. He diagnosed a primary joint arthritis, full-thickness articular cartilage defect of the left knee. Referring to the sixth edition of the A.M.A., *Guides*, Dr. Allen noted that using the diagnosis-based impairment (DBI) method resulted in a nine percent left lower extremity permanent impairment. Under the ROM method, referencing Table 16-23, page 549, he noted 129 degrees flexion resulting in 0 percent left lower extremity permanent impairment and a minus 9 degrees extension resulting in 10 percent left lower extremity permanent impairment. Dr. Allen used Table 16-17, page 545, to find a ROM modifier adjustment of .50 percent, which yielded a total permanent impairment of 10.50 percent rounded up to 11 percent. He concluded that the ROM methodology of 11 percent impairment represented appellant's right upper extremity impairment as it produced the higher rating over the 9 percent DBI methodology.

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

On January 16, 2020 OWCP forwarded Dr. Allen's report, the medical record, and a statement of accepted facts (SOAF) to Dr. Eric M. Orenstein, a Board-certified orthopedic surgeon, a district medical adviser (DMA). In a January 25, 2020 report, Dr. Orenstein reviewed Dr. Allen's findings and concluded that appellant had five percent permanent impairment of the left lower extremity. He noted that appellant had a diagnosis of left patellofemoral arthritis, ratable under Table 16-3, page 511 of the A.M.A., *Guides*. Dr. Orenstein explained that a full-thickness articular cartilage fell into class of diagnosis (CDX) of 1, and that he had a grade modifier for functional history (GMFH) of 2, and a grade modifier for physical examination (GMPE) of 2 for moderate palpatory findings, and a grade modifier for clinical studies (GMCS) of 2. Next, he found that the net adjustment was 2, which moved the rating to the right and resulted in a final permanent impairment rating of five percent. Dr. Orenstein found that the DBI section did not reference the ROM section as an alternative method for calculation of a permanent impairment rating for the diagnosis of patellofemoral arthritis and, therefore, the ROM method was not applicable. He also opined that patellofemoral arthritis was the more appropriate and specific diagnosis rather than the diagnosis of knee arthritis used by Dr. Allen. Dr. Orenstein also related that the date of MMI was November 6, 2019, the date of Dr. Allen's examination.

By decision dated March 18, 2020, OWCP granted appellant a schedule award for five percent permanent impairment of the left lower extremity. The award ran for 14.40 weeks for the period November 6, 2019 to February 14, 2020, and was based on the opinion of the DMA.

On March 24, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on June 26, 2020.

By decision dated August 4, 2020, OWCP's hearing representative affirmed the March 18, 2020 decision.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>4</sup> and its implementing federal 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. However, FECA does not specify the manner in which the percentage of loss 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.<sup>6</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>7</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.* See also *A.K.*, Docket No. 19-1927 (issued March 31, 2021); *T.T.*, Docket No. 18-1622 (issued May 14, 2019).

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

In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the knee, the relevant portion of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.<sup>8</sup> After the CDX is determined from the Knee Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>9</sup> Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.<sup>10</sup>

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's DMA providing rationale for the percentage of impairment specified.<sup>11</sup>

### ANALYSIS

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

The record contains a November 6, 2019 report from Dr. Allen, who opined that appellant had 11 percent permanent impairment of the left lower extremity based upon the ROM methodology. Dr. Allen explained that he utilized the ROM method because it resulted in a higher impairment calculation than the DBI method. However, his rating was improper under the A.M.A., *Guides* which explains that while ROM is an alternative approach for calculating permanent impairment of the lower extremities, it is to be used primarily as a physical examination factor and is only used to determine actual impairment values when it is not possible to otherwise define impairment.<sup>12</sup>

In a February 10, 2020 report, DMA Dr. Orenstein explained that the A.M.A., *Guides* do not allow an impairment rating due to loss of ROM for the applicable diagnosis. In addition, he disagreed with Dr. Allen's choice of diagnosis as primary knee arthritis rather than the more appropriate and specific diagnosis of patellofemoral arthritis in his impairment determination. The Board notes that Dr. Allen did not explain why he rated appellant's permanent impairment for

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<sup>8</sup> See A.M.A., *Guides* 509-11 (6<sup>th</sup> ed. 2009).

<sup>9</sup> *Id.* at 515-22.

<sup>10</sup> *Id.* at 523-28.

<sup>11</sup> See *supra* note 7 at Chapter 2.808.6(e) (March 2017).

<sup>12</sup> A.M.A., *Guides* 497; see also *M.S.*, Docket No. 20-0036 (issued February 5, 2021); *N.M.*, Docket No. 19-1925 (issued June 3, 2020); *M.P.*, Docket No. 18-1298 (issued April 12 2019).

primary knee arthritis; however, the DMA did explain that he had based his rating on patellofemoral arthritis as that was in fact appellant's diagnosed condition.

In rating appellant's left lower extremity permanent impairment, the DMA referred to Table 16-3 for the diagnosis of patellofemoral arthritis of the knee, applied the appropriate grade modifiers and net adjustment formula, and determined that appellant had five percent left lower extremity permanent impairment using the DBI method.

The Board finds that the weight of the medical evidence rests with the opinion of the DMA, Dr. Orenstein, as he properly utilized the medical evidence of record, Dr. Allen's examination findings, and applied the appropriate provisions and grading schemes of the sixth edition of the A.M.A., *Guides* to the clinical findings in determining that appellant had five percent permanent impairment of the left lower extremity based on her accepted left knee conditions.<sup>13</sup> Using the DBI rating method of the A.M.A., *Guides*, the DMA identified a CDX of 1 with a default grade C for full thickness articular cartilage defect. He explained the assignment of modifiers, reporting a GMFH and GMPE of 2. Application of the net adjustment resulted in a score of + 2 warranting movement from the default grade C to the right, equating to five percent permanent impairment of the left lower extremity for patellofemoral arthritis of the knee. For these reasons, the Board finds that OWCP properly relied on the DMA's assessment of five percent permanent impairment of the left lower extremity in granting appellant's schedule award.<sup>14</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.

### CONCLUSION

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

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<sup>13</sup> *M.S., id.; G.W.*, Docket No. 19-0430 (issued February 7, 2020).

<sup>14</sup> The A.M.A., *Guides* directs examiners to rate DBI's for the lower extremities pursuant to Chapter 16.2 which indicates at page 497, section 16.2a that impairments are defined by class and grade using regional grids for the hip, knee, and foot/ankle. The A.M.A., *Guides* explains that in most cases only one diagnosis in a region will be appropriate. If a patient has two significant diagnoses, the examiner should use the diagnosis with the highest impairment rating in that region that is causally related for the impairment calculation. A.M.A., *Guides* 497.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 4, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 28, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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