

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

_____)	
T.M., Appellant)	
)	
and)	Docket No. 23-0211
)	Issued: August 10, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Tulsa, OK, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 30, 2022 appellant filed a timely appeal from an October 31, 2022 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has greater than 31 percent permanent impairment of his right lower extremity for which he has previously received schedule award compensation.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on appeal.² The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On July 10, 2018 appellant, then a 58-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed right knee degeneration due to factors of his federal employment, including carrying mail for 30 years. He explained that he fell down three steps while walking off a porch in May 2017 and thereafter, he began experiencing pain, locking, and a lack of mobility in the right knee. Appellant noted that he first became aware of his condition and realized its relation to his federal employment on May 2, 2017. He did not stop work. On November 1, 2018 OWCP accepted the claim for unilateral primary osteoarthritis, patellofemoral disorders, and derangement of the medial meniscus of the right knee.³ Appellant underwent OWCP-authorized right total knee arthroplasty on February 26, 2019 and OWCP-authorized right knee manipulation under anesthesia on May 14, 2019. OWCP paid him wage-loss compensation on the supplemental rolls beginning February 16, 2019 and on the periodic rolls beginning March 3, 2019. On August 14, 2019 it expanded acceptance of appellant's claim to include right knee ankylosis. Appellant returned to light-duty work on August 27, 2019.

In a report dated October 9, 2019, Dr. Yogesh Mittal, a Board-certified orthopedic surgeon, found that appellant had reached maximum medical improvement (MMI). On physical examination he determined that appellant had normal gait, normal mobility and tracking of the patella, good tone of the quadriceps, and normal hamstring strength with no effusion. Dr. Mittal provided range of motion (ROM) figures of the right knee including 0 degrees of extension and 115 degrees of flexion with no stability to valgus or varus stresses. In a separate note of even date, he released appellant to return to full-duty work.

On October 16, 2019 appellant requested a schedule award evaluation and alleged loss of ROM and pain not reported by Dr. Mittal. On November 20, 2020 he filed a claim for compensation (Form CA-7) for a schedule award. Appellant provided a December 13, 2019 impairment rating from Dr. Mittal finding that he had good ROM. Dr. Mittal determined that he had 25 percent permanent impairment of his right lower extremity under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ He utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-3 (Knee Regional Grid -- Lower Extremity Impairments), page 511, the class of diagnosis

² Docket No. 08-2055 (issued September 23, 2009); (Docket No. 06-0098 (issued May 15, 2006).

³ OWCP previously accepted that appellant developed for L5-S1 disc herniation due to factors of his federal employment under OWCP File No. xxxxxx740. It granted appellant schedule awards on July 5, 2006; January 4, 2007, December 3, 2007, and June 22, 2010 in the cumulative amount of 10 percent permanent impairment of his left lower extremity and 4 percent permanent impairment of his right lower extremity which was due decreased sensation of 2 percent each of the superficial peroneal and sural nerves caused by his accepted L5-S1 disc herniation and resulting OWCP-approved surgery. The current claim, OWCP File No. xxxxxx951, has been administratively combined by OWCP with File No. xxxxxx740 serving as the master file.

⁴ A.M.A., *Guides*, 6th ed. (2009).

(CDX) for appellant's total right knee replacement resulted in Class 2, grade C, for 25 percent permanent impairment.

On February 10, May 1, and June 19, 2020 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), determined that, under the DBI rating method of the sixth edition of the A.M.A., *Guides*, appellant had 29 percent permanent impairment of his right lower extremity which included a Class 2, grade C for 25 percent permanent impairment due to total right knee replacement in accordance with Table 16-3, page 511 of the A.M.A., *Guides*. He noted that this represented appellant's total current right lower extremity impairment and included the four percent previously awarded in OWCP File No. xxxxxx740.

By decision dated September 30, 2020, OWCP granted appellant a schedule award for an additional 25 percent permanent impairment of the right lower extremity. The award ran for 72 weeks for the period October 9, 2019 through February 23, 2021.

In a report dated October 27, 2020, Dr. M. Stephen Wilson, specializing in orthopedic surgery, recounted appellant's history of injury and medical history. He performed a physical examination and found 105 degrees of flexion and weakness throughout flexion and extension. Dr. Wilson also reported tenderness to palpation of the medial and lateral joint lines and moderate joint effusion with chronic swelling. He applied the A.M.A., *Guides*, Table 16-3 and found that appellant had 31 percent permanent impairment of the right knee due to total knee replacement with mild motion deficits, a Class 3 impairment, with a grade C default value of 37 percent permanent impairment. Dr. Wilson applied Table 16-6, Table 16-7, and Table 16-8, pages 516-519, of the A.M.A., *Guides* and found a grade modifier for functional history (GMFH) of 2, due to gait alteration, a moderate problem; a grade modifier for physical examination (GMPE) of 1, due to mild and consistent palpatory findings, mild findings; and found that a grade modifier clinical studies (GMCS) was not applicable as it was used to determine the class of the impairment. He applied the net adjustment formula, page 521, of the A.M.A., *Guides*, to reach -2 or grade A, 31 percent permanent impairment of the right lower extremity.

On March 7, 2021 appellant requested reconsideration of the September 30, 2020 schedule award decision.

On April 1 and May 7, 2021 Dr. Kenechukwu Ugokwe, a Board-certified neurosurgeon acting as DMA, determined that, under the rating method *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July /August 2009) (The Guides Newsletter)* appellant had no permanent impairment of his right lower extremity as he was neurologically intact. He found that he had reached MMI on October 27, 2020. Dr. Ugokwe also applied the A.M.A., *Guides* finding that appellant had 31 percent permanent impairment of his right lower extremity due to his total knee replacement, a Class 3 impairment in accordance with Table 16-3 of the A.M.A., *Guides*. He listed a GMFH of 2, and a GMPE of 1, applied the net adjustment formula and determined that appellant had grade A, 31 percent permanent impairment of the right lower extremity. Dr. Ugokwe concluded that as appellant had previously been awarded 29 percent permanent impairment of the right lower extremity, he was currently entitled to an additional 2 percent permanent impairment of the right lower extremity.

By decision dated May 12, 2021, OWCP modified the September 30, 2020 decision finding that appellant had established an additional two percent permanent impairment of the left lower extremity.

By a second decision dated May 12, 2021, OWCP granted appellant an additional 2 percent permanent impairment, for a total of 31 percent permanent impairment of the right lower extremity due to the previously received schedule awards. The additional award ran for 5.76 weeks for the period February 24 through April 5, 2021.

On May 18, 2021 appellant requested a review of the written record from a representative of OWCP's Branch of Hearings and Review. He provided an August 3, 2021 statement contending that he had previously received schedule awards totaling 25 percent of his right lower extremity rather than 29 percent as calculated by OWCP and that therefore he was entitled to compensation for an additional 6 percent rather than an additional 2 percent permanent impairment as awarded by OWCP.

By decision dated September 15, 2021, OWCP's hearing representative affirmed the May 12, 2021 determination of the extent of appellant's permanent impairment and his schedule award compensation.

On September 30, 2021 appellant contended that his compensation for schedule award purposes was improperly combined to include his right lower extremity impairments due to both his accepted spine injury and his right knee replacement.

By decision dated December 17, 2021, OWCP denied modification of its prior decision.

On June 1, 2022 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions for a second opinion examination with Dr. Timothy G. Pettingell, a physician Board-certified in pain medicine, to determine the extent of his permanent impairment for schedule award purposes.

In a June 20, 2022 report, Dr. Pettingell reviewed the SOAF and history of medical treatment for both of appellant's accepted claims. He performed a neurological examination reporting no muscular atrophy and symmetrical and intact light touch in both lower extremities without deficits of a peripheral nerve or nerve root distribution. Dr. Pettingell found that appellant had no muscle stress reflexes in the right patella, but + 2 in the left patella. He also examined appellant's right knee and found significant palpable and audible retropatellar crepitation and a palpable mass at the medial joint line which was mobile and tender to the touch. Dr. Pettingell reported that appellant's right valgus angle was four degrees, and that active knee ROM measured with a goniometer was flexion of 108, 106, and 108 degrees. Knee extension was consistently -2 degrees with three measurements. Dr. Pettingell found that appellant had reached MMI on October 9, 2019 and applied the A.M.A., *Guides*, Table 16-3 to the accepted total right knee replacement and finding a DBI Class 3 impairment with a default grade C of 37 percent. He applied Table 16-6, Table 16-7, and Table 16-8, pages 516-519, and listed GMFH as 2, due to occasional use of a single point cane, GMPE of 2, due to moderate palpatory findings, and GMCS as 3, due to preoperative end-stage osteoarthritis. Applying the net adjustment formula, Dr. Pettingell reached -2 or 31 percent permanent impairment of the right lower extremity.

On September 5 and 28, 2022 Dr. Herbert White, Jr., a physician Board-certified in occupational medicine serving as DMA, reviewed the SOAF and medical history. He noted that he had not been provided with Dr. Pettingell's July 1, 2022 report. In an October 6, 2022 report, Dr. White reviewed Dr. Pettingell's July 1, 2022 report and concurred with his impairment rating of 31 percent permanent impairment of the right knee. He disagreed with the GMCS of 3, as the studies were done prior to MMI. Dr. White also found that the ROM impairment method was not applicable in accordance with section 16.7, page 543 of the A.M.A., *Guides*.

By decision dated October 31, 2022, OWCP denied the claim for an increased schedule award as appellant's current permanent impairment was no greater than the 31 percent permanent impairment of the right lower extremity previously awarded. It accorded the weight of the medical evidence to the reports of Dr. Pettingell and the DMA, Dr. White.

LEGAL PRECEDENT

The schedule award provisions of FECA⁵ and its implementing regulations⁶ 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 of a member shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants through its implementing regulations, OWCP has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁷ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁸ The Board has approved the use by 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.⁹

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*.¹⁰ In evaluating lower extremity impairment, the sixth edition requires identifying the impairment CDX, which is then adjusted by GMFH, GMPE, and GMCS.¹¹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX). Evaluators are directed to provide reasons for their impairment

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.*; see *D.C.*, Docket No. 20-0916 (issued September 14, 2021); see also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); see also *id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

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

¹⁰ A.M.A., *Guides*, 3, section 1.3 (6th ed. 2009).

¹¹ *Id.* at 494-531.

rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹²

Neither FECA nor its implementing regulations provide for the payment of a schedule for the permanent loss of use of the back/spine or the body as a whole.¹³ Furthermore, the back is specifically excluded from the definition of an organ under FECA.¹⁴ However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.¹⁵ The sixth edition of the A.M.A., *Guides*, however, does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. Recognizing that FECA, allows ratings for extremities and preclude ratings for the spine, *The Guides Newsletter* offers an approach to rating spinal nerve impairments consistent with sixth edition methodology.¹⁶ For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP procedures provide that *The Guides Newsletter* is to be applied as provided in section 3.700 of its procedures.¹⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 31 percent permanent impairment of the right lower extremity, for which he previously received schedule award compensation.

In a June 20, 2022 report, Dr. Pettingell, OWCP's second opinion physician, reviewed the SOAF and history of medical treatment for both of appellant's accepted claims. He found that appellant had reached MMI on October 9, 2019 and applied the A.M.A., *Guides*, Table 16-3 to the accepted total right knee replacement and finding a Class 3 impairment with a default grade C of 37 percent. Referring to the sixth edition of the A.M.A., *Guides*, Table 16-6, Table 16-7, and Table 16-8, Dr. Pettingell noted GMFH of 2, for a moderate problem, GMPE of 2, for a moderate problem, and GMCS as 3, a severe problem. Applying the net adjustment formula, he reached -2 or 31 percent permanent impairment of the right lower extremity. Dr. Pettingell further found no sensory or motor impairment of the right lower extremity and therefore no permanent impairment of the right lower extremity due to the accepted spine injury.

In his October 6, 2022 report, Dr. White, serving as DMA, discussed appellant's factual and medical history with respect to his accepted left lower extremity conditions. He reviewed

¹² See *M.P.*, Docket No. 18-1298 (issued April 12, 2019); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹³ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *C.T.*, Docket No. 20-0043 (issued April 30, 2021); *Ernest P. Govednick*, 27 ECAB 77 (1975).

¹⁴ See *id.* at § 8101(19); *C.T.*, *id.*; *Francesco C. Veneziani*, 48 ECAB 572 (1997).

¹⁵ *A.D.*, Docket No. 20-0553 (issued April 19, 2021); *Rozella L. Skinner*, 37 ECAB 398 (1986).

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5c(3) (March 2017).

¹⁷ FECA Transmittal No. 10-0004 (issued January 9, 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, at Exhibit 4 (January 2010).

Dr. Pettingell's July 1, 2022 report and concurred with his impairment rating of 31 percent permanent impairment of the right lower extremity. However, Dr. White disagreed with the application of GMCS of 3, Table, 16-8, page 519, as the clinical studies relied upon by Dr. Pettingell predated MMI and could not be considered in accordance with page 518 of the A.M.A., *Guides*. He also found that the ROM impairment method was not applicable in accordance with section 16.7, page 543 of the A.M.A., *Guides*. The record contains no medical evidence in conformance with the sixth edition of the A.M.A., *Guides* or *The Guides Newsletter* demonstrating a greater percentage impairment of the right lower extremity.¹⁸

The Board finds that OWCP properly relied on the opinions of Dr. White and Dr. Pettingell, as they appropriately applied the sixth edition of the A.M.A., *Guides* in determining that appellant had no greater than 31 percent permanent impairment of the right lower extremity previously awarded.

As appellant has not established greater than 31 percent permanent impairment of the right lower extremity, for which he previously received schedule award compensation, the Board finds that he has not met his 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 his burden of proof to establish greater than 31 percent permanent impairment of the right lower extremity, for which he previously received schedule award compensation.

¹⁸ See A.S., Docket No. 22-0930 (issued January 19, 2023); E.G., Docket No. 19-1081 (issued September 24, 2020); T.K., Docket No. 19-1222 (issued December 2, 2019); C.S., Docket No. 18-0920 (issued September 23, 2019).

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2023
Washington, DC

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

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

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