

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On February 4, 2010 appellant, then a 37-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that, on that day, his right knee gave out when he was sweeping mail on a delivery bar code sorter machine while in the performance of duty. On April 7, 2010 OWCP accepted the claim for right knee lateral meniscus tear. On May 3, 2010 appellant underwent OWCP-approved right knee arthroscopic surgery. OWCP paid wage-loss compensation on the supplemental rolls for temporary total disability from May 1 until June 10, 2010. Appellant resumed work in a light-duty capacity effective June 11, 2010.

On February 2, 2011 OWCP granted appellant a schedule award for 30 percent permanent impairment of the right lower extremity (right leg), which covered an 86.4-week period from September 8, 2010 through May 4, 2012.

On May 15, 2012 appellant underwent additional OWCP-authorized right knee arthroscopic surgery. OWCP paid appellant wage-loss compensation for temporary total disability from May 19, 2012 until his return to work on June 28, 2012.

On December 3, 2012 OWCP granted appellant a schedule award for an additional two percent permanent impairment of the right lower extremity. The award covered a period of 5.76 weeks from July 1 through August 10, 2012.

Appellant underwent an OWCP-authorized total right knee arthroplasty on March 14, 2013. OWCP paid appellant wage-loss compensation on the supplemental rolls for temporary total disability beginning February 7, 2013, and on the periodic rolls effective April 7, 2013. It continued to pay appellant wage-loss compensation for temporary total disability through August 26, 2014.

Appellant stopped work again on October 8, 2014 and OWCP paid him wage-loss compensation for temporary total disability until returning to full-time modified duty on November 26, 2014.

On April 25, 2016 appellant underwent OWCP-approved surgical revision of his right total knee arthroplasty. OWCP paid wage-loss compensation for temporary total disability beginning March 23, 2016 and on the periodic rolls effective May 29, 2016. It continued to pay appellant wage-loss compensation for temporary total disability through March 10, 2017, at which time he resumed work in a full-time limited-duty capacity. Thereafter, OWCP paid him wage-loss compensation on the supplemental rolls for periods of intermittent wage loss through June 9, 2017.

By decision dated December 4, 2018, OWCP granted appellant a schedule award for an additional 27 percent permanent impairment of the right lower extremity, for a total permanent

³ Docket No. 19-1465 (issued January 28, 2020).

impairment of 59 percent. The award covered a 77.76-week period from October 12, 2018 through April 8, 2020.

By decision dated June 4, 2019, OWCP suspended appellant's schedule award compensation effective June 22, 2019, as he had failed to provide an EN-1032 form in a timely manner.

Appellant appealed to the Board on June 26, 2019. By decision dated January 28, 2020, the Board reversed OWCP's June 4, 2019 decision, finding that OWCP's procedures specifically precluded suspension of schedule award compensation pursuant to 20 C.F.R. § 10.528.⁴

On November 19, 2020 OWCP expanded the acceptance of appellant's claim to include mechanical loosening of an internal right knee prosthetic joint. This decision listed appellant's accepted conditions as right knee bucket-handle tear of the lateral meniscus, right knee complex tear of the lateral meniscus, malignant neoplasm of the peripheral nerves of the right lower limb, unilateral primary osteoarthritis of the right knee, mechanical loosening of the right knee prosthetic joint, and right knee tear of the lateral meniscus.

On March 1, 2022 appellant filed a claim for compensation (Form CA-7) for an increased schedule award.

In a development letter dated March 9, 2022, OWCP informed appellant that no medical evidence had been received in support of his schedule award claim. It requested that he submit additional medical evidence from his treating physician including a date of maximum medical improvement (MMI), the diagnosis on which the impairment was based, a detailed description of any permanent impairment preexisting the injury, and a final rating of the permanent impairment pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)⁵. OWCP afforded appellant 30 days to submit this additional evidence.

On July 28, 2022 OWCP referred appellant, along with the medical record and a statement of accepted facts (SOAF), to Dr. Robert M. Moore, a Board-certified orthopedic surgeon, for a second opinion permanent impairment evaluation. On August 15, 2022 Dr. Moore reviewed the medical record and SOAF and conducted a physical examination. On examination of appellant's right lower extremity, he observed multiple healed surgical scars, and moderate swelling and marked tenderness and hypersensitivity over the medial, lateral, and anterior aspects of the right knee. Range of motion testing demonstrated a 10-degree flexion contracture and 75 degrees of flexion. Dr. Moore diagnosed right total knee arthroplasty. He noted that appellant was at MMI as of the date of examination. Dr. Moore rendered an impairment rating under the sixth edition of the A.M.A., *Guides*, referencing Table 16-3, Table 16-6, Table 16-7, Table 16-8, and Table 16-23, pages 511, 516, 517, 519, and 549, respectively. He noted that under Table 16-3 of the Knee Regional Grid, appellants range of motion findings were moderately impaired and that a total knee replacement with a poor result and the motion deficit, as class of diagnosis (CDX), corresponded to a Class 4 impairment with a default Grade C impairment of 67 percent. Dr. Moore stated that

⁴ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Claims*, Chapter 2.812.14 (May 2012).

⁵ A.M.A., *Guides* (6th ed. 2009).

appellant had an antalgic gait with objectively defined significant pathology with the use of a cane, corresponding to a grade modifier for functional history (GMFH) of 2. He had moderate palpatory findings supported by observed abnormalities and moderate range of motion deficit, corresponding to a grade modifier for physical examination (GMPE) of 2. Dr. Moore observed a total knee arthroplasty implant in good position that corresponded to a grade modifier for clinical studies (GMCS) of 2. He calculated that appellant's grade modifier adjustments resulted in Grade A, 59 percent impairment of the right lower extremity. Dr. Moore further noted that the current impairment rating was equivalent to the prior percentage awarded, and that no additional impairment had been incurred.

On August 24, 2022 OWCP requested further review by Dr. Michael M. Katz, a Board-certified orthopedic surgeon, serving as a district medical adviser (DMA). In a report dated August 31, 2022, Dr. Katz reviewed the SOAF and medical record, including Dr. Moore's August 15, 2022 report. He found that the following diagnoses were established: tear of the lateral meniscus of the right knee; bucket-handle tear of the lateral meniscus of the right knee, complex tear of the lateral meniscus of the right knee, malignant neoplasm of the peripheral nerves of the right lower limb including the hip; unilateral primary osteoarthritis of the right knee; and mechanical loosening of the internal right knee prosthetic joint. The DMA noted a prior schedule award of 59 percent for the right lower extremity. Referring to Table 16-3, page 511 of the A.M.A., *Guides*, Dr. Katz calculated that, under the diagnosis-based impairment (DBI) method, appellant had 59 percent permanent impairment of the right lower extremity, concurring with Dr. Moore. He found that the date of MMI was August 15, 2022, the date of Dr. Moore's impairment examination.

By decision dated September 22, 2022, OWCP denied appellant's claim for an increased schedule award for permanent impairment of the right lower extremity. It found that the medical evidence of record was insufficient to establish an increase in permanent impairment greater than the previous award for 59 percent permanent impairment of the right lower extremity.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁶ and its implementing federal regulations,⁷ 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 under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all

⁶ *Supra* note 1.

⁷ 20 C.F.R. § 10.404.

claimants and the Board has concurred in such adoption.⁸ As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.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)*.¹⁰ Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by GMFH, GMPE, and GMCS.¹¹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹² Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹³

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the percentage of permanent impairment using the A.M.A., *Guides*.¹⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish more than 59 percent permanent impairment of the right lower extremity, for which he previously received schedule award compensation.

On August 15, 2022 Dr. Moore rendered an impairment rating under the sixth edition of the A.M.A., *Guides*, referencing Table 16-3, Table 16-6, Table 16-7, Table 16-8, and Table 16-23, pages 511, 516, 517, 519, and 549, respectively. He noted that the range of motion findings were moderately impaired and that a total knee replacement with a poor result and the motion deficit corresponded to a CDX of 4 impairment with default Grade C impairment of 67 percent. Dr. Moore stated that appellant had an antalgic gait with objectively defined significant pathology with the use of a cane, corresponding to a GMFH of 2. Appellant had moderate palpatory findings supported by observed abnormalities and moderate range of motion deficit, corresponding to a GMPE of 2. Dr. Moore observed a total knee arthroplasty implant in good position that corresponded to a GMCS of 2. Applying the net adjustment formula, he calculated that appellant's grade modifier adjustments resulted in Grade A, 59 percent impairment of the right lower extremity. Dr. Moore further noted that the current impairment was equivalent to the prior

⁸ *Id.* at § 10.404(a); *see R.M.*, Docket No. 20-1278 (issued May 4, 2022); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award 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).

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

¹¹ *Id.* at 494-531.

¹² *Id.* at 521.

¹³ *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹⁴ *A.C.*, Docket No. 19-1333 (issued January 8, 2020); *B.B.*, Docket No. 18-0782 (issued January 11, 2019); *supra* note 10 at Chapter 2.808.6f (March 2017).

percentage awarded, and that no additional impairment had been incurred. In accordance with its procedures,¹⁵ OWCP forwarded Dr. Moore's report to Dr. Katz, OWCP's DMA, for review. On August 31, 2022 Dr. Katz noted the prior schedule award of 59 percent for the right lower extremity. Referring to Table 16-3, page 511 of the A.M.A., *Guides*, Dr. Katz calculated that, under the DBI method, appellant had 59 percent impairment of the right lower extremity, concurring with Dr. Moore. He found that the date of MMI was August 15, 2022, the date of Dr. Moore's examination.

The Board finds that Dr. Moore and the DMA, Dr. Katz, adequately explained how they arrived at appellant's rating of permanent impairment by listing specific tables and pages in the A.M.A., *Guides*. The Board also finds that both physicians properly interpreted and applied the standards of the sixth edition of the A.M.A., *Guides* to conclude that appellant had 59 percent permanent impairment of the right lower extremity. The opinions of Dr. Moore and the DMA therefore represent the weight of the medical evidence and support that he has no greater than 59 percent permanent impairment of the right lower extremity.

As appellant has not established greater than 59 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 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 59 percent permanent impairment of the right lower extremity, for which he previously received schedule award compensation.

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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