

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

|                                     |   |                        |
|-------------------------------------|---|------------------------|
| P.M., Appellant                     | ) |                        |
|                                     | ) |                        |
| and                                 | ) | Docket No. 24-0057     |
|                                     | ) | Issued: April 15, 2024 |
| U.S. POSTAL SERVICE, LONG BEACH     | ) |                        |
| PROCESSING AND DISTRIBUTION CENTER, | ) |                        |
| Long Beach, CA, Employer            | ) |                        |
|                                     | ) |                        |

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record<sup>1</sup>*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 11, 2023 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs (OWCP) dated May 17 and September 5, 2023. Pursuant to

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of her oral argument, appellant argued that the second opinion examiner did not properly evaluate her diagnosed medical condition. The Board, in exercising its discretion, denies her request for oral argument as her case can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUE**

The issue is whether appellant has met her burden of proof to establish greater than 31 percent permanent impairment of each lower extremity, for which she previously received schedule award compensation.

### **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 7, 2013 appellant, then a 54-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that her repetitive duties including pushing, pulling, twisting, turning, lifting, and unloading caused her to develop knee injuries. She noted that she first became aware of her condition and realized its relation to factors of her federal employment on February 13, 2005. On July 26, 2013 OWCP accepted appellant's claim for a temporary aggravation of localized primary osteoarthritis of the lower legs. She stopped work on June 25, 2013 and OWCP paid her wage-loss compensation on the supplemental rolls, effective September 7, 2013, and on the periodic rolls, effective May 31, 2015.

On February 3, 2016 OWCP expanded the acceptance of appellant's claim to include permanent aggravation of unilateral primary osteoarthritis of the left and right knee.

By decision dated November 14, 2018, OWCP granted appellant a schedule award for 31 percent permanent impairment of each lower extremity. The award ran for 178.56 weeks from June 23, 2018 through November 23, 2021 and was based on the opinion of Dr. Michael M. Katz, a Board-certified orthopedist serving as an OWCP district medical adviser (DMA).

OWCP received additional evidence. A computerized tomography (CT) scan of the right knee dated May 21, 2018 revealed a total knee arthroplasty without evidence of hardware complication and moderate joint effusion.

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the September 5, 2023 decision, appellant submitted additional evidence to OWCP. 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 new evidence for the first time on appeal. *Id.*

<sup>4</sup> Docket No. 15-54 (issued April 7, 2015).

On December 14, 2021 appellant filed a claim for compensation (Form CA-7) for an additional schedule award.

In a development letter dated December 28, 2021, OWCP requested that appellant submit a permanent impairment evaluation from her attending physician in accordance with the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>5</sup> OWCP afforded her 30 days to submit the requested evidence.

In medical reports dated April 25, 2022, Dr. William Kim, a Board-certified orthopedist, noted that appellant underwent bilateral total knee replacements in 2016. He indicated that appellant reached MMI on December 21, 2021. Dr. Kim diagnosed status post bilateral total knee replacements. He noted findings on physical examination of anterior knee pain, her range of motion was 0 to 80 degrees bilaterally, which was functional but not normal, limited knee flexion to 95 to 100 degrees, no instability, and a broad-based gait. Dr. Kim referred to the sixth edition of the A.M.A., *Guides* and noted that for total knee replacements appellant sustained 34 percent whole person impairment and 15 percent permanent impairment of the right knee and 15 percent permanent impairment of the left knee.

On January 24, 2023 appellant filed a Form CA-7 for an additional schedule award.

On January 26, 2023 OWCP routed Dr. Kim's report, a statement of accepted facts (SOAF), and the case file to Dr. David I. Krohn, a Board-certified internist serving as a DMA for OWCP. It requested that Dr. Krohn provide an evaluation of appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.

In a February 10, 2023 report, Dr. Krohn indicated that he had reviewed the SOAF and the medical record, including Dr. Kim's April 25, 2022 report. He noted that he was unable to assign an impairment rating at this time. Dr. Krohn noted that Dr. Kim did not provide range of motion findings for extension of each knee, the basis for grade modifiers, rationale for the 34 whole person impairment rating, and the basis on which he assigned 15 percent permanent impairment for the right and left knee. He also requested that OWCP provide the basis for the prior schedule award for 31 percent permanent impairment for each lower extremity. Dr. Krohn requested the additional information prior to completing his report.

On February 14, 2023 OWCP informed Dr. Kim that his impairment evaluation of appellant's lower extremities was insufficient and requested that he provide an impairment evaluation in accordance with the sixth edition of the A.M.A., *Guides*. It enclosed a copy of Dr. Krohn's February 10, 2023 report for review and comment. No response from Dr. Kim was received.

On March 20, 2023 OWCP referred appellant and the case file, including a SOAF, to Dr. Richard Rogachefsky, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation regarding appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*.

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<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

OWCP received a March 28, 2023 report from Dr. Kim who noted that there was no change in appellant's status and that she was doing reasonably well. Dr. Kim recommended follow up in one year.

In a report dated April 24, 2023, Dr. Rogachefsky provided a history of clinical presentation and described the accepted employment conditions, as well as appellant's medical treatment. On examination of both knees, he noted mild tenderness to palpation at the anterior aspect of the knees, well-healed scars, negative varus/valgus stress test, negative anterior/posterior drawer test, negative Lachman's test, intact strength, intact sensory testing, intact reflexes, and mildly antalgic gait. Dr. Rogachefsky recorded 90 degrees of flexion for the right knee, 90 degrees of flexion for the left knee, 0 degrees of extension for the right knee, and 0 degrees of extension for the left knee. He diagnosed degenerative arthritis of the right and left knee, and status post total right and left knee replacement and opined that appellant had reached MMI on April 24, 2023.

Dr. Rogachefsky referred to the sixth edition of the A.M.A., *Guides* and utilized the diagnosis-based impairment (DBI) rating method to calculate appellant's bilateral lower extremity impairment, noting that, under Table 16-3 (Knee Regional Grid), page 511, the class of diagnosis (CDX) for appellant's total knee replacement of each knee, good results, resulted in a Class 2 impairment with a default value of 25 percent. He assigned a grade modifier for functional history (GMFH) of 1, a grade modifier for physical examination (GMPE) of 1, and a grade modifier for clinical studies (GMCS) of 3. Dr. Rogachefsky utilized the net adjustment formula  $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1-2) + (1-2) + (3-2) = -1$ , which resulted in movement from the 25 percent default value to 23 percent permanent impairment of each lower extremity due to bilateral total knee replacements.

On May 2, 2023 OWCP routed Dr. Rogachefsky's report, a SOAF, and the case file to Dr. Krohn, the DMA, for review and a determination of appellant's permanent impairment.

In a May 9, 2023 report, Dr. Krohn indicated that he had reviewed the SOAF and medical record. Discussing Dr. Rogachefsky's April 24, 2023 findings, he utilized the DBI rating method to find that under Table 16-3, page 511, the CDX for appellant's total knee replacement of each knee, resulted in a Class 3 impairment, fair result with mild motion deficits, with a default value of 37 percent. Dr. Krohn assigned a GMFH of 1, and a GMCS of 3. He found that GMPE was not applicable. Dr. Krohn utilized the net adjustment formula  $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1-3) + (3-3) = -2$ , which resulted in a movement from the 37 percent default value to grade A, 31 percent permanent impairment of each lower extremity due to bilateral total knee replacements, fair result. Addressing the discrepancy between his evaluation and Dr. Rogachefsky, he noted that Dr. Rogachefsky assigned a Class 2 impairment for each total knee replacement; however, he did not properly take into account the fair result with mild motion deficit of each knee, which caused the impairment to become a Class 3.

By decision dated May 17, 2023, OWCP denied appellant's claim for an additional schedule award.

On May 22, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated September 5, 2023, an OWCP hearing representative affirmed the May 17, 2023 decision.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>6</sup> and its implementing regulations<sup>7</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 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 adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>8</sup> As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>9</sup> 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.<sup>10</sup>

The sixth edition of the A.M.A., *Guides* provides for a DBI method of evaluation utilizing the World Health Organization's *International Classification of Functioning, Disability and Health (ICF)*.<sup>11</sup> 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>12</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>13</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>14</sup>

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<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Id.* See also Ronald R. Kraynak, 53 ECAB 130 (2001).

<sup>9</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

<sup>10</sup> *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>11</sup> A.M.A., *Guides* 3, section 1.3.

<sup>12</sup> See *id.* at 509, Table 16-3.

<sup>13</sup> *Id.* at 515-22.

<sup>14</sup> *Id.* at 23-28.

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

### ANALYSIS

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

In support of her increased schedule award claim, appellant submitted impairment evaluation reports from Dr. Kim dated April 25, 2022. Based on physical examination and the sixth edition of the A.M.A., *Guides*, Dr. Kim calculated a permanent impairment rating for bilateral total knee replacements of 34 percent whole person impairment with 15 percent permanent impairment of the right knee and 15 percent permanent impairment of the left knee. However, because he did not explain how his assessment of permanent impairment for the knees was derived in accordance with the A.M.A., *Guides*, his opinion is of diminished probative value.<sup>16</sup> The Board further notes that neither FECA nor its regulations provide for the payment of a schedule award for whole body impairment.

OWCP referred appellant to Dr. Rogachefsky, for a second opinion evaluation. On April 24, 2023 Dr. Rogachefsky utilized the DBI rating method and found that, under Table 16-3, page 511, the CDX for appellant's total knee replacement of each knee, good results, resulted in a Class 2 impairment with a default value of 25 percent. He assigned a GMFH of 1, a GMPE of 1, and a GMCS of 3. Dr. Rogachefsky utilized the net adjustment formula, which resulted in movement from the 25 percent default value to 23 percent permanent impairment of each lower extremity due to right and left total knee replacements.

The DMA, Dr. Krohn, who reviewed the reports of both Dr. Kim and Dr. Rogachefsky, opined that appellant had 31 percent permanent impairment of each lower extremity due to bilateral total knee replacements. The Board notes that Dr. Krohn properly determined that Dr. Rogachefsky erred when he rated appellant's bilateral total knee replacement under a CDX of Class 2. He properly noted that appellant's bilateral total knee replacement fell under Class 3, fair result with range of motion deficits, assigned grade modifiers, and calculated a net adjustment. Dr. Krohn assigned a GMFH of 1, found that GMPE was not applicable, and assigned a GMCS of 3. Dr. Krohn utilized the net adjustment formula  $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1-3) + (3-3) = -3$ , which resulted in a movement from the 37 percent default value to 31 percent permanent impairment of each lower extremity due to bilateral total knee replacements. The Board has held that, when an attending physician's report gives an estimate of permanent impairment, but it is not based on proper application of the A.M.A., *Guides*, OWCP may follow

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<sup>15</sup> See *supra* note 9 at Chapter 2.808.6f (March 2017). See also *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

<sup>16</sup> *Supra* note 14.

the advice of the DMA if he or she has properly applied the A.M.A., *Guides*.<sup>17</sup> In his May 9, 2023 report, Dr. Krohn properly applied the A.M.A., *Guides* to the physical examination findings of Dr. Rogachefsky. The Board finds that he accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions about appellant's condition, which comported with his findings, and with the appropriate provisions of the A.M.A., *Guides*.<sup>18</sup> The Dr. Krohn's report, therefore, carries the weight of the medical evidence and establishes that appellant has 31 percent permanent impairment of each lower extremity for which appellant previously received schedule award compensation, and thus properly found that she was not entitled to additional schedule award compensation for impairment to the lower extremities.<sup>19</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 permanent impairment.

### CONCLUSION

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

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<sup>17</sup> See *J.D.*, Docket No. 19-0414 (issued August 19, 2019); *P.L.*, Docket No. 17-0355 (issued June 27, 2018); see also *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

<sup>18</sup> See *J.M.*, Docket No. 18-1387 (issued February 1, 2019).

<sup>19</sup> See *F.T.*, Docket No. 16-1236 (issued March 12, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 17 and September 5, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 15, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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