

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

_____)	
D.T., Appellant)	
)	
and)	Docket No. 24-0126
)	Issued: April 3, 2024
DEPARTMENT OF THE ARMY, CORPUS)	
CHRISTI ARMY DEPOT, Corpus Christi, TX,)	
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, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On November 27, 2023 filed a timely appeal from an October 31, 2023 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 over the merits of this case.

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 18, 2021 appellant, then a 55-year-old sheet metal mechanic, filed a traumatic injury claim (Form CA-1) alleging that on September 15, 2021 he experienced pain to his knee and calf muscle when descending steps from an aircraft and twisted his knee while in the performance of duty. He did not initially stop work. OWCP accepted the claim for left knee medial meniscus tear and left leg strain. On November 29, 2021 appellant underwent left knee arthroscopy with medial meniscus repair surgery.

On October 10, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

Appellant submitted a February 13, 2023 report from Dr. Charles Breckenridge, a Board-certified orthopedic surgeon, who indicated that appellant was evaluated for a left knee injury, which occurred at work. On physical examination of appellant's left knee, Dr. Breckenridge observed full extension and flexion on range of motion (ROM). He also noted significant patellofemoral crepitations and no intra-articular swelling. McMurray testing was negative for both medial and lateral compartment pain. Dr. Breckenridge diagnosed left knee joint pain, left knee medial meniscus tear, and left patella chondromalacia. He indicated that he reviewed appellant's radiographs and examination findings and noted that the major issue continued to be patellofemoral chondral changes. Dr. Breckenridge referenced the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*)² and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-3 (Knee Regional Grid -- Lower Extremity Impairments), page 511, appellant had a default value of 10 percent, based on patellofemoral arthritis under full-thickness articular cartilage defect. He assigned a grade modifier for functional history (GMFH) of 1 and a grade modifier for physical examination (GMPE) of 1. Dr. Breckenridge indicated that a grade modifier for clinical studies (GMCS) was not applicable. He determined that appellant had a final rating of 10 percent permanent impairment of the left lower extremity.

On October 18, 2023 OWCP forwarded Dr. Breckenridge's February 13, 2023 report, along with a statement of accepted facts (SOAF), to Dr. Herbert White, Jr., a physician Board-certified in occupational medicine and serving as a district medical adviser (DMA), for review and opinion on the extent of any employment-related permanent impairment of his left lower extremity under the A.M.A., *Guides*. In an October 23, 2023 report, Dr. White indicated that he had reviewed the SOAF and the medical record, including Dr. Breckenridge's February 13, 2023 report. He noted that an October 14, 2021 left knee magnetic resonance imaging (MRI) scan revealed a medial meniscal tear and grade 4 chondromalacia of the patella³. Dr. White determined that, utilizing the DBI-rating method, under Table 16-3, of the A.M.A., *Guides*, he determined the appropriate class of diagnosis (CDX) resulted in a Class 1 impairment, with a default value of three percent, for patellofemoral arthritis with full-thickness articular cartilage defect. He assigned

² A.M.A., *Guides* (6th ed. 2009).

³ An October 14, 2021 left knee MRI scan revealed horizontal oblique undersurface tear of the medial meniscus body extending into the posterior horn body junction, focal grade IV chondromalacia trochlear sulcus measuring 1.1 x 0.7 cm, grade II chondromalacia of the patella, and grade II chondromalacia of the medial compartment.

a GMFH of 1 for left knee pain and a GMPE of 1 for mild palpatory findings. Dr. White found that GMCS was not applicable. He utilized the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) = (1-1) + (1-1) = 0$, which resulted in a final impairment of three percent permanent impairment of the left lower extremity. Dr. White also reported that the accepted conditions of his claim were not eligible for the alternative ROM rating methodology under the A.M.A., *Guides*. He noted his disagreement with Dr. Breckenridge's impairment rating and explained that Dr. Breckenridge rated the impairment as if it were a two-millimeter (mm) cartilage interval impairment, not a full-thickness cartilage interval defect. Dr. White indicated that appellant reached maximum medical improvement (MMI) on February 13, 2023.

By decision dated October 31, 2023, OWCP granted appellant a schedule award for three percent permanent impairment of his left lower extremity. The schedule award ran for 8.64 weeks from February 13 through April 14, 2023, and was based on Dr. White's October 23, 2023 DMA report.

LEGAL PRECEDENT

The schedule award provisions of FECA⁴ and its implementing regulations⁵ 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 of loss of a member 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 and the Board has concurred in such adoption.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.⁷

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 509.⁸ 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 $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$.⁹ Under Chapter 2.3, evaluators are directed to

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a); *see also T.T.*, Docket No. 18-1622 (issued May 14, 2019); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Chapter 3.700.2 and Exhibit 1 (January 2010).

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

⁹ *Id.* at 515-22.

provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.¹⁰

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

ANALYSIS

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

In a February 13, 2023 report, Dr. Breckenridge, appellant's treating physician, provided examination findings and noted that based on appellant's radiographs and examination findings, the major issue continued to be patellofemoral chondral changes. He referenced the A.M.A., *Guides* and determined that pursuant to the DBI rating method, under Table 16-3 (Knee Regional Grid), appellant had a default value of 10 percent permanent impairment of the left lower extremity, based on patellofemoral arthritis under full-thickness articular cartilage defect.

In an October 23, 2023 report, Dr. White, serving as the DMA, reviewed Dr. Breckenridge's February 13, 2023 report and noted his disagreement with his impairment rating. He explained that Dr. Breckenridge rated the impairment with a default value of 10 percent permanent impairment, as if it were a 2 mm cartilage interval impairment, not a full-thickness cartilage interval defect. The Board notes that Dr. White properly determined that Dr. Breckenridge erred in rating appellant's patellofemoral arthritis as a Class 1 impairment, with a default value of 10 percent, for 2 mm cartilage interval.¹²

Dr. White also indicated that he had reviewed the SOAF and the medical record. He applied the A.M.A., *Guides* and concluded that appellant had three percent permanent impairment of the left lower extremity. The Board has reviewed Dr. White's rating, and finds that he properly applied the appropriate tables and grading schedules to the findings from Dr. Breckenridge's report, pursuant to the A.M.A., *Guides*.¹³ Dr. White properly utilized the DBI-rating method to find that, under Table 16-3 (Knee Regional Grid), appellant had a Class 1 impairment for patellofemoral arthritis with full-thickness articular cartilage defect, which resulted in a default value of three percent. He assigned a GMFH of 1 and a GMPE of 1 and applied the net adjustment

¹⁰ *Id.* at 23-28.

¹¹ *Supra* note 7 at Chapter 2.808.6f (March 2017).

¹² *See J.S.*, Docket No. 23-0271 (issued September 18, 2023).

¹³ *See A.F.*, Docket No. 23-0325 (issued July 28, 2023); *see also R.S.*, Docket No. 21-0833 (issued January 25, 2022).

formula, which resulted in a final impairment of three percent permanent impairment of the left lower extremity.

As the medical evidence of record is insufficient to establish greater than the three percent permanent impairment of the left lower extremity previously awarded, the Board finds that appellant 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 three percent permanent impairment of the left lower extremity, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2024
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board