United States Department of Labor
Employees' Compensation Appeals Board

E.C., Appellant	)	
and	)	**Docket No. 24-0686**
	)	**Issued: December 19, 2024**
U.S. POSTAL SERVICE, POST OFFICE, Coppell, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 17, 2024 appellant filed a timely appeal from a March 29, 2024 merit decision and a May 16, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish greater than 14 percent permanent impairment of his right lower extremity, for which he previously received schedule award compensation; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 29, 2020 appellant, then a 44-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a right knee injury due to factors of his federal

[1] 5 U.S.C. § 8101 *et seq*.

employment. He explained that he had performed his job duties for 21 years, which required repetitive bending, walking, squatting, and standing for long periods of time. Appellant noted that he first became aware of his condition on January 24, 2018, and realized its relationship to his federal employment on July 23, 2020. He stopped work on July 24, 2020. OWCP accepted the claim, under OWCP File No. xxxxxx159, for aggravation of unilateral primary osteoarthritis, right knee; right knee effusion; and other meniscus derangements, posterior horn of medial meniscus, right knee.[2] It paid appellant wage-loss compensation on the supplemental and periodic rolls from August 13, 2020 through October 8, 2022.

On September 29, 2020 appellant underwent a right knee partial meniscectomy. He underwent a right knee arthroscopy for right knee medial and lateral meniscus tears on October 1, 2021.

In a May 16, 2022 report, Dr. Gregory Gardner, a Board-certified osteopathic family practitioner, reviewed appellant's medical record and noted his physical examination findings. He noted appellant's accepted right knee conditions of unilateral primary osteoarthritis, effusion, and other meniscus derangements, posterior horn of medial meniscus. Dr. Gardner found that appellant had reached maximum medical improvement (MMI) as of May 16, 2022. He found, under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[3] appellant had 12 percent right lower extremity permanent impairment based on a diagnosis-based impairment (DBI) rating for a partial (medial and lateral) meniscal injury. Dr. Gardner further determined that there was no applicable permanent impairment rating under the range of motion (ROM) methodology. He included his impairment calculations.

On June 3, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On June 24, 2022 OWCP referred the case record, along with a June 24, 2022 statement of accepted facts (SOAF), to Dr. James W. Butler, a Board-certified occupational preventive medicine physician and OWCP district medical adviser (DMA). It requested that he review the medical record and provide a permanent impairment rating of appellant's right lower extremity under the sixth edition of the A.M.A., *Guides*.

In a July 25, 2022 report, Dr. Butler noted that the medical records did not document a right lateral meniscectomy, but the September 29, 2020 operative report reflected a right medial meniscectomy. He related that appellant's medical records reflected a significant tri-compartmental osteoarthritis, which may be a more impairing diagnosis than his medial meniscectomy. Referencing page 518 of the A.M.A., *Guides*, Dr. Butler indicated that to rate the

[2] Under OWCP File No. xxxxxx834 (date of injury October 7, 2009) and OWCP File No. xxxxxx875 (date of injury December 15, 2008) OWCP accepted several right knee and right lower extremity conditions. Appellant underwent OWCP-authorized right knee surgeries. Under OWCP File No. xxxxxx875, OWCP issued appellant a schedule award for seven percent permanent impairment to the right lower extremity. Under OWCP File No. xxxxxx834, it granted a schedule award for seven percent permanent impairment of the right lower extremity.

[3] A.M.A., *Guides* (6th ed. 2009).

tri-compartmental osteoarthritis, a radiologist should take standing x-rays and provide measurements of the cartilage intervals.

On August 23, 2022 OWCP referred appellant to Dr. George Cole, a Board-certified osteopathic orthopedic surgeon, for a second opinion examination to determine whether appellant had sustained a right knee permanent impairment due to his accepted employment injuries.

In an October 27, 2022 report, Dr. Cole noted that the case was accepted for aggravation of unilateral primary osteoarthritis of right knee and included prior claims with injury-related surgeries. He reviewed the medical records and reported examination findings. Dr. Cole opined that appellant reached MMI on May 3, 2022, when he was examined by Dr. John S. Townsend, IV, his treating family medicine physician. Under the DBI methodology, he opined that appellant had a Class 1, grade B or six percent right lower extremity impairment for a class of diagnosis (CDX) of arthritis but noted that x-rays showing the cartilage interval were not provided for review. Under the ROM methodology, Dr. Cole opined that appellant had Class 1 or 10 percent right lower extremity impairment for 100 degrees of limited flexion. He set forth his impairment calculations and concluded that appellant had 10 percent right lower extremity impairment as the ROM methodology yielded the higher impairment rating.

In a January 21, 2023 report, the DMA, Dr. Butler, reviewed Dr. Cole's impairment report and opined that he was unable to assign an impairment rating as there were no x-ray reports, which he explained was critical as noted under page 518 of the A.M.A., *Guides* for a permanent impairment rating based on appellant's osteoarthritis diagnosis. The DMA also noted that per Chapter 16 of the A.M.A., *Guides*, ROM was only utilized as the rating methodology when there was no other appropriate diagnosis to base an impairment rating on. In this case, however there was an appropriate diagnosis.

In a February 10, 2023 letter, OWCP requested that Dr. Townsend provide standing x-rays as described on page 518 of the A.M.A., *Guides* to determine an impairment rating for appellant's tri-compartmental osteoarthritis.

In a December 21, 2022 x-ray report, which evaluated appellant's bilateral knee arthritis, Dr. Nicolas Galante, a Board-certified diagnostic radiologist, presented x-ray findings but no compartmental measurements. He provided impressions of mild-to-moderate bilateral right greater than left tricompartmental degenerative change, bilateral joint effusions, and status-post prior right-sided anterior cruciate ligament (ACL) reconstruction.

In a February 7, 2023 supplemental report, Dr. Cole reviewed the December 21, 2022 x-ray report of appellant's right knee and recounted the findings from that report. He opined that appellant reached MMI on October 27, 2022, the date of his examination.

In a March 16, 2023 report, the DMA, Dr. Butler, advised that he was unable to assign a permanent impairment rating based on appellant's osteoarthritis as the radiologist failed to provide cartilage interval measurements.

OWCP received duplicative copies of Dr. Galante's December 21, 2022 x-ray report and forwarded it along with a June 24, 2022 SOAF and the medical record to the DMA, Dr. Butler, to provide a permanent impairment rating of appellant's right lower extremity under the A.M.A., *Guides*.

In a May 5, 2023 report, the DMA, Dr. Butler, again emphasized that under Table 16-3 of the A.M.A., *Guides*, an arthritis diagnoses must have cartilage interval measurements. He requested that the cartilage interval be measured by a radiologist and the results sent directly to him.

OWCP thereafter received an August 7, 2020 right knee x-ray report from Dr. Nicholas G. Iwasko, a Board-certified musculoskeletal diagnostic radiologist, which noted medial compartment articular cartilage interval of 6.0 millimeter (mm) and lateral compartment articular cartilage interval 7.2 mm.

On June 20, 2023 OWCP referred appellant's case to the DMA, Dr. Butler, for a supplemental report.

In a June 29, 2023 report, the DMA, Dr. Butler, indicated that he once again could not make a determination of an appropriate impairment rating. He noted that the measurements he received for the right knee cartilage interval were from 2020 and that appellant had undergone an operative procedure since that time. The DMA noted that appellant, now two and half years later, had accelerated changes to his arthritis. Therefore, to assign an impairment rating, he needed measurements of the cartilage interval of the right knee as defined on page 518 of the A.M.A., *Guides*, at the time of MMI.

On August 24, 2023 OWCP referred the case record, along with a June 24, 2022 SOAF, to Dr. Vinod Panchbhavi, a Board-certified orthopedic surgeon, for a second opinion permanent impairment evaluation.

In an October 6, 2023 report, Dr. Panchbhavi reviewed the SOAF along with appellant's medical record. He noted the cartilage interval measurements from the August 7, 2020 right knee x-ray. Dr. Panchbhavi provided physical examination findings. He diagnosed right knee unilateral primary osteoarthritis, effusion, and other meniscus derangements, posterior horn of medial meniscus, right knee. Dr. Panchbhavi opined that appellant reached MMI on October 6, 2023, based on his examination findings. He referred to the A.M.A., *Guides* and utilized the DBI rating method for partial (medial and lateral) meniscectomy. Dr. Panchbhavi found that, under Table 16-3, appellant's CDX of partial medial and lateral meniscectomies of the right knee resulted in a Class 1 impairment with a default value of 10 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 1. Dr. Panchbhavi utilized the net adjustment formula, which resulted in no movement of the default grade, and a rating of 10 percent permanent impairment of the right lower extremity.

In a November 18, 2023 report, the DMA, Dr. Butler, again requested measurements of the right knee cartilage intervals to determine if the impairment rating should be based on the accepted condition of unilateral osteoarthritis versus the partial medial and lateral menis cectomy.

On December 29, 2023 OWCP wrote to an imaging center and requested that the cartilage interval measurements be obtained from the December 21, 2022 x-ray or that a new x-ray be performed, if necessary.

In a January 16, 2024 right knee x-ray report, Dr. Iwasko indicated, in pertinent part, that the medial compartment articular cartilage interval of appellant's right knee was 4.2 mm and the lateral compartment articular cartilage interval was 6.0 mm.

On February 2, 2024 OWCP referred appellant's case along with a February 2, 2024 SOAF, which included prior impairment ratings of the right lower extremity under OWCP File Nos. xxxxxx875 and xxxxxx834, to the DMA, Dr. Butler, for a permanent impairment rating of appellant's right lower extremity. It also asked the DMA to address whether prior schedule awards under OWCP File No. xxxxxx875, wherein 7 percent permanent impairment of the right lower extremity for right ankle was awarded, and OWCP File No. xxxxxx834, wherein 7 percent permanent impairment for right knee was awarded, were incorporated with appellant's current permanent impairment rating of the right knee. OWCP noted that when providing the current impairment rating the DMA should stipulate whether the percentage provided included the prior percentage awarded or if it should be considered an addition to the prior percentage awarded. Also, if the current impairment is less than or equivalent to the prior percentage awarded, then the DMA should stipulate that no additional impairment had been incurred. The DMA was advised by OWCP to follow the A.M.A., *Guides* with regard to the appropriate methodology used by the rating physician and to independently calculate the impairment using both the DBI and ROM impairment methodology, if appropriate, for the diagnosis in question and to identify which method produced the higher impairment rating. It further instructed the DMA to review and comment on Dr. Panchbhavi's October 6, 2023 impairment rating, review the updated SOAF and the requested x-ray documentation dated January 16, 2024, and provide the date appellant attained maximum medical improvement (MMI).

On February 5, 2024 OWCP administratively combined OWCP File Nos. xxxxxx875, xxxxxx834 and xxxxxx072 into the current case, with the current file serving as the master file.

In a March 14, 2024 report, the DMA, Dr. Butler, recounted that on October 1, 2021 appellant had undergone a right knee partial medial and lateral meniscectomy. He noted that appellant had previously been awarded 7 percent permanent impairment of the right lower extremity under OWCP File No. xxxxxx875, and 7 percent permanent impairment of the right lower extremity under OWCP File No. xxxxxx834 for his right knee permanent impairment. The DMA, Dr. Butler, opined that the date of MMI was October 6, 2023, the date of Dr. Panchbhavi's impairment evaluation. Under the DBI methodology, he opined under Table 16-3 Knee Regional Grid, page 509, that appellant's CDX of right knee partial (medial and lateral) meniscectomy was Class 1, grade C impairment with a default value of 10 percent lower extremity impairment. The DMA, Dr. Butler assigned a GMFH of 1 due to antalgic gait and GMPE of 1 for palpatory findings. He noted that the clinical studies confirmed a net adjustment of 0 for a final impairment rating of Class 1, grade C or 10 percent right lower extremity impairment rating. The DMA, Dr. Butler noted that appellant had previously received 7 percent permanent impairment ratings of the right lower extremity for each of the knee injuries in 2006 and 2009, for a total 14 percent permanent impairment rating of the right knee. As the current rating was only 10 percent impairment, he opined that there was no additional impairment. Based on Dr. Iwasko's report, which showed the cartilage intervals in the medial was 4.2 mm and in the lateral was 6.0 mm, the DMA, Dr. Butler further found that an impairment based on arthritis was not ratable. He also explained that per Chapter 16, page 497 of the A.M.A., *Guides*, ROM was primarily used as a physical examination finding and was only used to determine actual impairment values when it was not possible to define impairment.

By decision dated March 29, 2024, OWCP denied appellant's claim for an additional schedule award, finding that the medical evidence did not support an increase in the previously paid schedule award compensation for 14 percent permanent impairment of the right lower extremity. The weight of the medical evidence was accorded to the DMA's, Dr. Butler's, March 14, 2024 report, which relied upon the October 6, 2023 findings of Dr. Panchbhavi and the January 16, 2024 right knee x-ray measurements of Dr. Iwasko.

On May 13, 2024 appellant requested reconsideration. He indicated that he had numerous surgeries on his right knee which caused him to fall on almost a daily basis.

By decision dated May 16, 2024, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA,[4] and its implementing federal regulations,[5] 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.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

Chapter 16 of the sixth edition of the A.M.A., *Guides*, pertaining to the lower extremities, provides that diagnosis-based impairment is the primary method of calculation for the lower limb and that most impairments are based on the DBI where impairment class is determined by the diagnosis and specific criteria as adjusted by the grade modifiers for functional history, physical examination, and clinical studies. It further provides that alternative approaches are also provided for calculating impairment for peripheral nerve deficits, complex regional pain syndrome, amputation, and range of motion. Range of motion is primarily used as a physical examination adjustment factor.[8] The A.M.A., *Guides,* however, also explain that some of the diagnosis-based grids refer to the range of motion section when that is the most appropriate mechanism for grading the impairment. This section is to be used as a stand-alone rating when other grids refer to this section or no other diagnosis-based sections of the chapter are applicable for impairment rating of a condition.[9]

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id. See also T.T.,* Docket No. 18-1622 (issued May 14, 2019).

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

[8] A.M.A., *Guides* (6th ed. 2009) 497, section 16.2.

[9] *Id.* at 543; *see also M.D.*, Docket No. 16-0207 (issued June 3, 2016); *D.F.,* Docket No. 15-0664 (issued January 8, 2016).

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, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.[10] 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).[11] 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.[12]

It is well established that benefits payable under 5 U.S.C. § 8107(c) are reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.[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 nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[14]

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

OWCP accepted appellant's July 29, 2020 occupational disease claim for aggravation of unilateral primary osteoarthritis, right knee; right knee effusion; and other meniscus derangements, posterior horn of medial meniscus, right knee. It assigned this claim OWCP File No. xxxxxx159 and ultimately combined appellant's prior cases, which included OWCP File Nos. xxxxx875 and xxxxx834, into the present claim, with the present claim serving as the master file. The record reflects that appellant previously received a total of 7 percent permanent impairment for his right ankle under OWCP File No. xxxxxx875 and 7 percent permanent impairment for his right knee under OWCP File No. xxxxxx834, for a total 14 percent permanent impairment of the right lower extremity.

OWCP referred appellant to Dr. Panchbhavi for a second opinion permanent impairment evaluation. In his report dated October 6, 2023, Dr. Panchbhavi utilized the DBI rating method and found that, under Table 16-3, based on the CDX of partial medial and lateral meniscectomies

[10] *Id*. at 509-11.

[11] *Id*. at 515-22.

[12] *Id*. at 23-28.

[13] *R.P.*, Docket No. 25-0025 (issued December 4, 2024); *T.S.*, Docket No. 16-1406 (issued August 9, 2017); *T.S.*, Docket No. 09-1308 (issued December 22, 2009).

[14] *See supra* note 7 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).

of the right knee, appellant had a Class 1 impairment with a default value of 10 percent. He assigned a GMFH of 1, a GMPE of 1, and a GMCS of 1. Dr. Panchbhavi utilized the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) or (1-1) + (1-1) +(1-1), which resulted in no movement of the default grade, and a 10 percent permanent impairment rating of appellant's right lower extremity.

OWCP properly routed Dr. Panchbhavi's report to the DMA, Dr. Butler.[15] Dr. Butler reviewed Dr. Panchbhavi's impairment report and he agreed with Dr. Panchbhavi's 10 percent right lower extremity impairment rating. Dr. Butler also reviewed Dr. Iwasko's January 16, 2024 x-ray report, which showed that appellant's cartilage intervals in the medial meniscus were 4.2 mm and in the lateral were 6.0 mm. The Board finds that Dr. Butler properly determined under Table 16-3, an impairment based on arthritis was not ratable for either primary knee joint arthritis which must measure 3 mm cartilage interval or patellofemoral arthritis which must measure 2 mm cartilage interval. Under Table 16-3 Knee Regional Grid, page 509, Dr. Butler opined that the CDX of right knee partial (medial and lateral) meniscectomy was a Class 1, grade C impairment, with a default value of 10 percent lower extremity impairment. He assigned GMFH of 1, GMPE of 1, and a GMCS of 0, based on the x-ray findings, and applying the net adjustment formula, concluded that appellant's right lower extremity impairment was 10 percent. Dr. Butler also properly explained that per Chapter 16, page 497 of the A.M.A., *Guides*, ROM was primarily used as a physical examination finding and was only used to determine actual impairment values when it was not possible to define impairment.[16]

As previously noted, benefits payable under 5 U.S.C. § 8107(c) are reduced by the period of compensation paid under the schedule for an earlier injury if the latter impairment in whole or in part would duplicate the compensation payable for the prior impairment.[17]

The Board notes that appellant had previously received schedule awards for a total 14 percent permanent impairment due to his prior right knee and right ankle conditions. While OWCP denied appellant's claim for an additional schedule award, the Board notes that a claimant is not precluded from an additional schedule award solely because he or she received a greater award to the same scheduled member from another claim.[18] The Board has previously held that simply comparing the prior percentage of permanent impairment awarded to the current impairment for the same member is not always sufficient to deny an increased schedule award claim.[19] The issue is not whether the current permanent impairment rating is greater than the prior impairment ratings,

[15] 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. *See* Federal (FECA) Procedure Manual, *supra* note 7 at Chapter 2.808.6f (March 2017). *See K.W.*, Docket No. 22-0320 (issued July 28, 2022); *K.R.*, Docket No. 21-0247 (issued February 25, 2022); *J.J.*, Docket 18-1615 (issued March 5, 2019); *Isidoro Rivera*, 12 ECAB 348 (1961).

[16] *R.R.*, Docket No. 22-0525 (issued May 18, 2023).

[17] *Supra* note 13.

[18] *See S.M.*, Docket No. 17-1826 (issued February 26, 2018).

[19] *R.K.*, Docket No. 19-0247 (issued August 1, 2019); *M.K.*, Docket No. 18-1614 (issued March 25, 2019); *T.S.*, Docket No. 16-1406 (issued August 9, 2017).

but whether it duplicates in whole or in part the prior impairment rating.[20] Therefore, the Board finds that OWCP has not properly analyzed appellant's entitlement to schedule award benefits in the present claim for his accepted right knee conditions. OWCP shall issue an updated SOAF and refer the medical evidence of record to a DMA to determine whether appellant's current right knee impairment is duplicative of his prior permanent impairments for which he has received schedule award compensation. Following any further necessary development, OWCP shall issue a *de novo* decision in this case.

CONCLUSION

The Board finds that this case is not in posture for decision.[21]

ORDER

IT IS HEREBY ORDERED THAT the March 29 and May 16, 2024 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 19, 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

[20] *Id*.

[21] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.