

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish greater than 22 percent permanent impairment of the left lower extremity for which she previously received schedule award compensation; and (2) whether appellant has met her burden of proof to establish greater than 7 percent permanent impairment of the right lower extremity for which she previously received schedule award compensation.

FACTUAL HISTORY

On July 17, 2003 appellant, then a 40-year-old letter carrier filed a traumatic injury claim (Form CA-1) alleging that on July 15, 2003 she injured her left knee and struck her head when she tripped on the raised lip of a sidewalk and fell forward while in the performance of duty. She stopped work on July 15, 2003 and returned on July 18, 2003. OWCP initially accepted the claim for superficial injury of the hip and thigh. It expanded acceptance of the claim to include open wound of the face, post-concussion syndrome, nasal bone fracture, and left medial meniscus tear. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning December 13, 2003.

By decision dated October 28, 2005, OWCP granted appellant a schedule award for 10 percent permanent impairment of the left lower extremity. The period of the award ran for 28.8 weeks from June 30, 2004 through January 17, 2005.

On July 19, 2011 OWCP expanded acceptance of appellant's claim to include a consequential right knee sprain. On October 21, 2012 it further expanded acceptance of the claim to include tear of the right lateral meniscus.

By decision dated December 5, 2012, OWCP granted appellant a schedule award for an additional 12 percent permanent impairment of the left lower extremity and 2 percent permanent impairment of the right lower extremity. The period of the award ran for 40.32 weeks from January 20 through October 28, 2012.

On May 23, 2014 appellant underwent an OWCP-authorized right knee arthroscopy with lateral meniscectomy and debridement chondroplasty.

On December 16, 2016 appellant filed a claim for compensation (Form CA-7) requesting increased schedule awards. After development of the medical evidence including referral for a second opinion examination, and to OWCP district medical adviser (DMA) by decision dated September 21, 2017, OWCP denied her claim for increased schedule awards.⁴

On June 24, 2019 appellant underwent an OWCP-authorized left total knee replacement.

⁴ OWCP noted that appellant had received schedule award compensation for a total of 12 percent permanent impairment of the left lower extremity and 2 percent permanent impairment of the right lower extremity. However, appellant has received a total of 69.12 weeks of compensation for both lower extremities or more than a combined 20 percent permanent impairment.

On March 28, 2023 appellant again filed a Form CA-7 requesting increased schedule awards and a second opinion evaluation, noting that her attending physician did not provide impairment ratings.

On April 11, 2023 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, for a second opinion examination and evaluation with Dr. Charles F. Xeller, a Board-certified orthopedic surgeon. It requested that Dr. Xeller provide an opinion regarding appellant's lower extremity permanent impairment under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁵

In a May 9, 2023 report, Dr. Xeller reported the findings of his April 27, 2023 examination. He noted that appellant underwent right knee partial meniscectomies on May 23, 2014 and left total knee replacement on June 24, 2019. Dr. Xeller reviewed diagnostic studies of the right knee and found severe degenerative narrowing of the lateral compartment. He indicated that appellant reached maximum medical improvement on June 25, 2020.

Dr. Xeller 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 left total knee replacement, 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 1. Dr. Xeller utilized the net adjustment formula $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1-2) + (1-2) + (1-2) = -3$, which resulted in movement from the 25 percent default value to 21 percent permanent impairment of the left lower extremity due to total knee replacement.

With regard to appellant's right lower extremity, Dr. Xeller found progressive cartilage loss with three millimeters remaining. He utilized the DBI rating method to find that, under Table 16-3, the CDX for appellant's right knee osteoarthritis, resulted in a Class 1 impairment with a default value of seven percent. Dr. Xeller assigned a GMFH of 1, GMPE of 1, and GMCS of 1. He utilized the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (1 - 1) + (1-1) = 0$ which resulted in a grade C or seven percent permanent impairment of the right lower extremity.

OWCP then referred the medical records and SOAF to Dr. Nathan Hammel, a Board-certified orthopedic surgeon, serving as a DMA. In June 9 and 30, 2023 reports, Dr. Hammel concurred with Dr. Xeller's impairment rating of 21 percent permanent impairment of the left lower extremity and 7 percent permanent impairment of the right lower extremity. He explained that the sixth edition of the A.M.A., *Guides* only allowed for lower extremity standalone range of motion-based impairment ratings in the setting of severe organic motion loss not ascribable to a specific DBI, which was not the setting of appellant's accepted conditions. Referring to Table 16-3 of the A.M.A., *Guides*, Dr. Hammel noted that the CDX for a knee arthritis would be a Class 1, grade C impairment, with a default rating of seven percent. He assigned a GMFH of 1

⁵ A.M.A. *Guides* 6th ed (2009).

for continued pain, stated GMPE was 1 for tenderness, and that GMCS was not applicable as it set the class. Dr. Hammel utilized the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) = (1 - 1) + (1 - 1) = 0$, which resulted in a grade C or seven percent permanent impairment of the right lower extremity related to knee deficits.

With regard to appellant's left lower extremity, again referring to Table 16-3 of the A.M.A., *Guides*, Dr. Hammel noted that the CDX for a total knee replacement would be a Class 2, grade C impairment, with a default rating of 25 percent. He assigned a GMFH of 1 for continued pain, stated GMPE was 1 for tenderness, and that GMCS was not applicable as it set the class. Dr. Hammel utilized the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) = (2 - 1) + (2 - 1) = -2$, which resulted in a grade A or 21 percent permanent impairment of the left lower extremity related to knee deficits. He related that appellant had previously received schedule awards totaling 22 percent permanent impairment of the left lower extremity and 2 percent permanent impairment of the right lower extremity. Dr. Hammel found that while appellant had an additional five percent right lower extremity permanent impairment, she had no additional left lower extremity impairment.

By decision dated July 17, 2023, OWCP noted that appellant had previously received schedule awards totaling 22 percent of the left lower extremity and denied her claim for an increased left lower extremity schedule award.

By decision dated July 19, 2023, OWCP granted appellant a schedule award for an additional five percent permanent impairment of her right lower extremity. The period of the award ran for 14.4 weeks from April 27 through August 5, 2023.

LEGAL PRECEDENT -- ISSUES 1 & 2

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, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.⁸

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*

⁶ *Supra* note 2.

⁷ 20 C.F.R. § 10.404.

⁸ For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used, A.M.A., *Guides* (6th ed. 2009); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a Exhibit 1 (March 2017); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

*and Health (ICF): A Contemporary Model of Disablement.*⁹ Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by GMFH, GMPE, and GMCS.¹⁰ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹¹ The standards for evaluation of permanent impairment of an extremity under the A.M.A., *Guides* are based on all factors that prevent a limb from functioning normally, such as pain, sensory deficit, and loss of strength.¹²

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*.¹³

ANALYSIS -- ISSUES 1 & 2

The Board finds that appellant has not met her burden of proof to establish greater than 22 percent permanent impairment of the left lower extremity for which she previously received schedule award compensation. The Board further finds that she has not met her burden of proof to establish greater than seven percent permanent impairment of the right lower extremity for which she previously received schedule award compensation.

In reports dated June 9 and 30, 2023, Dr. Hammel utilized the DBI rating method to find that under Table 16-3 of the A.M.A., *Guides*, the CDX for a knee arthritis would be a Class 1, grade C impairment, with a default rating of seven percent. He assigned a GMFH of 1 for continued pain, stated GMPE was 1 for tenderness, and that GMCS was not applicable as it set the class. The net adjustment modifier was 0, and thus, the DMA concluded that appellant had seven percent permanent impairment of the right lower extremity.

With regard to appellant's left lower extremity, again referring to Table 16-3 of the A.M.A., *Guides*, Dr. Hammel noted that the CDX for a total knee replacement would be a Class 2, grade C impairment, with a default rating of 25 percent. He assigned a GMFH of 1 for continued pain, stated GMPE was 1 for tenderness, and that GMCS was not applicable as it set the class. The net adjustment modifier was -2, and thus, the DMA concluded that appellant had 21 percent permanent impairment of the left lower extremity.

The Board finds that the well-rationalized reports of Dr. Hammel, based on the clinical findings of Dr. Xeller, provided an opinion on appellant's lower extremity permanent impairment, which were derived in accordance with the standards of the sixth edition of the

⁹ A.M.A., *Guides* (6th ed. 2009) p.3, section 1.3.

¹⁰ *Id.* at 494-531.

¹¹ *Id.* at 521.

¹² *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *E.B.*, Docket No. 10-0670 (issued October 5, 2010); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹³ *A.C.*, Docket No. 19-1333 (issued January 8, 2020); *B.B.*, Docket No. 18-0782 (issued January 11, 2019); *supra* note 8 at Chapter 2.808.6f (March 2017).

A.M.A., *Guides* and therefore, entitled to the weight of the evidence.¹⁴ Dr. Hammel's calculations, including the derivation of grade modifiers and the application of the net adjustment formula, properly applied the relevant standards to the physical examination and diagnostic testing results. As his report is detailed, well rationalized, and based on a proper factual background, Dr. Hammel's opinion represents the weight of the medical evidence.¹⁵

As there is no medical evidence of record, in conformance with the A.M.A., *Guides*, establishing a greater percentage of permanent impairment than the 22 percent permanent impairment of the left lower extremity previously awarded and that 7 percent permanent impairment of the right lower extremity previously awarded, the Board finds that appellant has not met her burden of proof.¹⁶

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 22 percent permanent impairment of the left lower extremity for which she previously received schedule award compensation. The Board further finds that she has not met her burden of proof to establish greater than seven percent permanent impairment of the right lower extremity for which she previously received schedule award compensation.

¹⁴ See *N.B.*, Docket No. 22-1295 (issued May 25, 2023); *Y.S.*, Docket No. 19-0218 (issued May 15, 2020); *R.D.*, Docket No. 17-0334 (issued June 19, 2018).

¹⁵ *B.G.*, Docket No. 24-0027 (issued April 26, 2024); *R.G.*, Docket No. 21-0491 (issued March 23, 2023).

¹⁶ See *A.R.*, Docket No. 21-0346 (issued August 17, 2022).

ORDER

IT IS HEREBY ORDERED THAT the July 17 and 19, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 15, 2024
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