

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

| | | |
|--------------------------------------|---|------------------------------|
| <hr/> | | |
| D.W., Appellant |) | |
| |) | |
| and |) | |
| |) | Docket No. 24-0526 |
| |) | Issued: July 15, 2024 |
| DEPARTMENT OF TRANSPORTATION, |) | |
| MERCHANT MARINE ACADEMY, |) | |
| Kings Point, NY, Employer |) | |
| <hr/> |) | |

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 21, 2024 appellant filed a timely appeal from an April 18, 2024 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than 25 percent permanent impairment of the left lower extremity for which he previously received schedule award compensation.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 13, 1985 appellant, then a 20-year-old midshipman cadet, filed a traumatic injury claim (Form CA-1) alleging that on September 12, 1985 he injured his left knee during intramurals while in the performance of duty. He did not stop work. OWCP accepted the claim for left knee hematoma, sprain of the anterior cruciate ligament (ACL) of the left knee, unilateral secondary osteoarthritis of the knee, sprain of the lateral collateral ligament of the left knee, tear of the left medial meniscus, and chronic instability of the left knee. It paid appellant wage-loss compensation for total disability on the daily rolls from June 16 through July 13, 1985 and paid wage-loss compensation for partial disability effective July 14, 1986.

Appellant filed a claim for compensation (Form CA-7) for a schedule award.

OWCP granted appellant a schedule award for 10 percent permanent impairment of his left lower extremity on April 25, 1990. The period of the award ended on November 2, 1990.

Appellant underwent OWCP-authorized surgeries including left knee arthroscopy with partial medial meniscectomy, surgical removal of hardware, and reconstruction of the ACL with osteochondral fracture of the medial femoral condyle.

By decision dated January 31, 1992, OWCP granted appellant a schedule award for an additional 15 percent permanent impairment of the left lower extremity, for a total of 25 percent permanent impairment.² The period of the award ran for 43.20 weeks from November 13, 1990 through September 11, 1991.

By decision dated May 10, 1995, OWCP reduced appellant's wage-loss compensation effective July 14, 1986 based on its finding that he had actual earnings wages as a system analyst in private employment with wages of \$470.00 per week. OWCP continued to pay appellant wage-loss compensation on the periodic rolls based on his loss of wage-earning capacity.

On November 1, 2022 appellant filed a Form CA-7 requesting an additional schedule award.

In development letters dated November 3 and 10, 2022, OWCP requested that appellant submit an impairment evaluation from his attending physician in accordance with the standards of the sixth edition of the A.M.A., *Guides*.³ It afforded him 30 days to submit the requested information.

On February 7, 2023 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Christo Koullisis, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation regarding the extent of his permanent impairment under the sixth edition of the A.M.A., *Guides*.

² OWCP applied the third edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (3rd ed.).

³ A.M.A., *Guides* (6th ed. 2009).

In a February 28, 2023 report, Dr. Koullisis diagnosed left ACL tear, left medial meniscal tear, sprain of the lateral collateral ligament, and left knee osteoarthritis. He provided a permanent impairment rating of appellant's left lower extremity using the sixth edition of the A.M.A., *Guides*. Dr. Koullisis utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-3 (Knee Regional Grid), page 10, the class of diagnosis (CDX) for appellant's cruciate ligament injury resulted in a Class 1 impairment of seven percent. He further found that using Table 16-3 page 511, with the CDX of primary knee joint arthritis, resulted in a Class 1 impairment with a value of six percent. Dr. Koullisis combined these values to reach 13 percent permanent impairment of the left lower extremity.

On May 4, 2023 OWCP requested that Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), review the case to determine whether appellant sustained additional permanent impairment of the left lower extremity and to identify a date of MMI.

In a May 8, 2023 medical report, Dr. Katz determined that Dr. Koullisis' February 28, 2023 report did not contain sufficient detail to permit assignment of an impairment rating in accordance with the A.M.A., *Guides*. He recommended an additional second opinion evaluation.

On June 14, 2023 OWCP requested clarification from Dr. Koullisis. No response was received.

On August 30, 2023 appellant resubmitted information regarding his review of the calculation of his previous impairment rating in accordance with the third edition of the A.M.A., *Guides*⁴ and his correct rate of pay.

On December 27, 2023 OWCP referred appellant along with the case file, a SOAF, and a series of questions to Dr. Omar Hussamy, 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*.

In a February 8, 2024 report, Dr. Hussamy listed the accepted conditions of localized secondary osteoarthritis left lower leg, tear of the medial meniscus, aggravation of chronic instability of the left knee, and sprains of the anterior cruciate, lateral ligament, and lateral collateral ligaments of the left knee. He determined that appellant had reached MMI on February 8, 2024. Dr. Hussamy utilized the DBI impairment rating method to find that, under Table 16-3 (Knee Regional Grid), page 510, the CDX for appellant's cruciate or collateral ligament injury with mild instability resulted in a Class 1 impairment with a default value of 10 percent. Dr. Hussamy excluded a grade modifier for functional history (GMFH) as he judged this unreliable in the presence of mild instability with no atrophy and excluded a grade modifier for physical examination (GMPE) as instability was used in the CDX assignment. He utilized a grade modifier for clinical studies (GMCS) of 2 due to the presence of a meniscal tear and subsequent partial medial meniscectomy. Dr. Hussamy utilized the net adjustment formula, $(GMCS - CDX) = (2 - 1) = 1$, which resulted in a grade D or 12 percent permanent impairment of the left lower extremity.

⁴ A.M.A., *Guides* (3rd ed.).

Dr. Hussamy then utilized the range of motion (ROM) methodology and applied Table 16-23, page 549, to find no ratable left knee impairment based on ROM loss of flexion and extension. He concluded that DBI should be used as the rating method and found 12 percent permanent impairment of the left lower extremity.

On February 27, 2024 OWCP requested that Dr. Katz, serving as DMA, review the case to determine whether appellant sustained additional permanent impairment of the left lower extremity and to identify a date of MMI.

In a March 4, 2024 medical report, Dr. Katz utilized the DBI rating method to find that, under Table 16-3, the CDX for appellant's left cruciate or collateral ligament injury, mild laxity, fell under a Class 1 impairment with a default value of 10 percent. He excluded GMFH from the formula finding that it was not applicable but assigned GMPE of 1 based on normal motion. Dr. Katz assigned GMCS of 2. He utilized the net adjustment formula, $(GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (2 - 1) = 1$ which resulted in a grade D or 12 percent permanent impairment of the left lower extremity. Dr. Katz noted that the ROM impairment method was not applicable in accordance with section 16.7, page 543 of the A.M.A., *Guides*.

On March 21, 2024 OWCP requested a supplemental report from Dr. Katz.

Appellant continued to provide information and argument addressing his medical findings and permanent impairment ratings from 1989 through 1992 in accordance with the third edition of the A.M.A., *Guides*.

Dr. Katz responded on March 30, 2024 and agreed with Dr. Hussamy's impairment rating. He noted that as appellant's present impairment did not exceed the previous award of 25 percent permanent impairment of the left lower extremity, he was not entitled to an additional schedule award.

By decision dated April 18, 2024, OWCP denied appellant's claim for an additional schedule award.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁵ and its implementing federal regulations,⁶ 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

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

specified edition of the A.M.A., *Guides*, published in 2009.⁷ 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.⁸

Chapter 16 of the sixth edition of the A.M.A., *Guides*, pertaining to the lower extremities, provides that DBI 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 a GMFH, a GMPE, and/or a GMCS. It further provides that alternative approaches are also provided for calculating impairment for peripheral nerve deficits, complex regional pain syndrome, amputation, and ROM. ROM is primarily used as a physical examination adjustment factor.⁹ The sixth edition of the A.M.A., *Guides*, however, also explains that some of the diagnosis-based grids refer to the ROM 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.¹⁰

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 knees, reference is made to Table 16-3 (Knee Regional Grid).¹¹ Under this table, after the CDX is determined and a default grade value is identified, the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$.¹² 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.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 permanent impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.¹⁴

⁷ 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); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁸ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁹ A.M.A., *Guides* 497, section 16.2.

¹⁰ *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).

¹¹ *Id.* at 509.

¹² *Id.* at 515-22.

¹³ *Id.* at 23-28.

¹⁴ *See D.J.*, Docket No. 19-0352 (issued July 24, 2020).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 25 percent permanent impairment of the left lower extremity for which he previously received schedule award compensation.

In reports dated March 4 and 30, 2024, Dr. Katz reviewed Dr. Hussamy's February 8, 2024 findings and utilized the DBI impairment rating method to find that, under Table 16-3 (Knee Regional Grid) on page 510, the CDX for the left cruciate ligament tear with mild laxity, fell under a Class 1 impairment with a default value of 10 percent. He utilized the net adjustment formula, $(GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (2 - 1) = 1$, which resulted in a grade D or 12 percent permanent impairment of the left lower extremity related to knee deficits. Dr. Katz found that appellant's lower extremity conditions did not meet the criteria for applying the ROM impairment rating method.¹⁵ He noted that appellant's current impairment failed to exceed the prior impairment and thus he was not entitled to an additional award.

The Board finds that the well-rationalized reports of Dr. Katz provided an opinion on appellant's lower extremity permanent impairment, which were derived in accordance with the standards of the sixth edition of the A.M.A., *Guides* and therefore, entitled to the weight of the evidence.¹⁶ Dr. Katz' 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. Katz' opinion represents the weight of the medical evidence.¹⁷

As there is no medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing a greater percentage of permanent impairment than the 25 percent permanent impairment of the left lower extremity previously awarded, the Board finds that appellant has not met his burden of proof.¹⁸

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.

¹⁵ Table 16-3 and Table 16-4 do not provide for use of the ROM method to rate a claimant's lower extremity impairment. See A.M.A., *Guides* 509-15. See also *supra* notes 9 and 10.

¹⁶ See *B.G.*, Docket No. 24-0027 (issued April 26, 2024); *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).

¹⁷ *R.G.*, Docket No. 21-0491 (issued March 23, 2023).

¹⁸ See *A.R.*, Docket No. 21-0346 (issued August 17, 2022).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than 25 percent permanent impairment of the left lower extremity for which he previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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