

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

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<b>L.S., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 24-0086</b>
	)	<b>Issued: June 20, 2024</b>
<b>U.S. POSTAL SERVICE, PITTSBURGH POST OFFICE, Pittsburgh, PA, Employer</b>	)	
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*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 9, 2023 appellant filed a timely appeal from a September 21, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

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

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the September 21, 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 additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On August 4, 2020 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 30, 2020 she sustained numerous puncture wounds to her left ankle, and bruises and scratches on her right upper extremity and back, when a dog came through an unsecured screen door, bit her left ankle, and dragged her to the ground while in the performance of duty. She stopped work on July 30, 2020. OWCP accepted the claim for traumatic ecchymosis of the left lower extremity and multiple lacerations of the left lower extremity.

In a September 3, 2020 report, Dr. Anthony P. Behm, a Board-certified internist, released appellant to full-duty work, effective September 8, 2020.

On July 27, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a July 27, 2023 report, Dr. Maria Armstrong Murphy, a Board-certified physiatrist, recounted a history of injury and treatment and reviewed medical records. On examination of the left lower extremity, she observed difficulty in toe and heel walking, small nodules at the Achilles tendon, a 5 centimeter (cm) by .5 cm scar near the Achilles tendon with insensate and hypersensitive regions, a 2 cm by 1 cm scar on the anterior shin with decreased sensation, and multiple healed skin abrasions. Dr. Murphy also observed full strength and range of motion (ROM) of the left ankle. She noted that appellant used skin creams on her left lower extremity and wore compression stockings while at work and whenever on her feet. Dr. Murphy diagnosed traumatic ecchymosis and multiple lacerations of the left lower extremity. She opined that appellant had reached maximum medical improvement (MMI) as of September 9, 2020, when she returned to work. Referring to Table 8-2 (Skin Disorders Grid) at pages 166 and 167 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>3</sup> Dr. Murphy found a Class 1 skin disorder with scarring, nodules, areas of sensory loss, difficulty with heel and toe walking, and the need for topicals and compression stockings. She indicated that there were no applicable grade modifiers, leaving the default value of five percent whole person impairment rating undisturbed. Referring to Table 16-10 (Impairment Values Calculated from Lower Extremity Impairment), page 530 of the A.M.A., *Guides*, Dr. Murphy converted the 5 percent whole person permanent impairment to 12 percent permanent impairment of the left lower extremity.

On August 4, 2023 OWCP routed Dr. Murphy's July 27, 2023 report, a statement of accepted facts (SOAF), and the case record, to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as OWCP's district medical adviser (DMA), for review and evaluation of the permanent impairment of appellant's left lower extremity pursuant to the sixth edition of the A.M.A., *Guides*.<sup>4</sup>

In an August 16, 2023 report, Dr. Hammel indicated his review of the SOAF and Dr. Murphy's report and that appellant had reached MMI on July 27, 2023. He noted that the most recent clinical examination documented continued pain after a dog bite, with full ROM and healed wounds. Dr. Hammel noted that the ROM rating method was not applicable as there was no severe

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>4</sup> *Id.*

organic motion loss not attributable to a diagnosis-based impairment (DBI). He therefore provided an impairment rating utilizing the DBI rating method. Referring to Table 16-3 (Knee Regional Grid) on page 509 of the sixth edition of the A.M.A., *Guides*, Dr. Hammel found that a class of diagnosis (CDX) of soft tissue lesion, resulted in a Class 1 grade C impairment, with a default value of 1 percent permanent impairment. He assessed a grade modifier for functional history (GMFH) of 1 for continued pain, and a grade modifier for physical examination findings (GMPE) of 1 based on tenderness, with no applicable grade modifier for clinical studies (GMCS). Applying the net adjustment formula,  $(GMFH - CDX) + (GMPE - CDX) = (1 - 1) + (1 - 1) = 0$ , which resulted in a net adjustment of zero or one percent permanent impairment of the left lower extremity. Dr. Hammel noted that Dr. Murphy evaluated appellant's percentage of permanent impairment using the skin disorders table under Chapter 8 of the A.M.A., *Guides* whereas he utilized the DBI rating method under Chapter 16, which resulted in a different percentage of permanent impairment.

In a September 20, 2023 report, Dr. Murphy reiterated her prior calculation of 12 percent permanent impairment of the left lower extremity according to Table 8-2.

By decision dated September 21, 2023, OWCP granted appellant a schedule award for one percent permanent impairment of the left lower extremity. The award ran for three weeks and .16 days from July 27 through August 16, 2023.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>5</sup> and its implementing federal regulations,<sup>6</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. 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.<sup>7</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>8</sup>

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 the GMFH, GMPE, and/or GMCS. It further provides that alternative approaches are also provided for calculating impairment for peripheral nerve deficits,

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<sup>5</sup> 5 U.S.C. § 8107(c).

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6<sup>th</sup> 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).

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

complex regional pain syndrome, amputation, and ROM. ROM is primarily used as a physical examination adjustment factor.<sup>9</sup> The A.M.A., *Guides*, however, also explain 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.<sup>10</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, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.<sup>11</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>12</sup> Under Chapter 2.3, evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.<sup>13</sup>

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>14</sup>

Section 8123(a) of FECA provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>15</sup> This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>16</sup>

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<sup>9</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009) 497, section 16.2.

<sup>10</sup> *Id.* at 543; *see also* A.W., Docket No. 23-0618 (issued September 27, 2023); M.D., Docket No. 16-0207 (issued June 3, 2016); D.F., Docket No. 15-0664 (issued January 8, 2016).

<sup>11</sup> *Id.* at 509-11.

<sup>12</sup> *Id.* at 515-22.

<sup>13</sup> R.F., Docket No. 19-0778 (issued September 18, 2019); R.R., Docket No. 17-1947 (issued December 19, 2018); R.V., Docket No. 10-1827 (issued April 1, 2011).

<sup>14</sup> *Supra* note 7 at Chapter 2.808.6f (March 2017); *see* D.A., Docket No. 23-0695 (issued October 18, 2023); K.R., Docket No. 21-0247 (issued February 25, 2022); D.J., Docket No. 19-0352 (issued July 24, 2020).

<sup>15</sup> 5 U.S.C. § 8123(a).

<sup>16</sup> 20 C.F.R. § 10.321; *see* V.B., Docket No. 19-1745 (issued February 25, 2021); K.C., Docket No. 19-1251 (issued January 24, 2020); R.C., 58 ECAB 238 (2006).

## ANALYSIS

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

In support of her schedule award claim, appellant submitted a July 27, 2023 report by Dr. Murphy, who opined that according to Table 8-2 of the sixth edition of the A.M.A., *Guides*, she had 12 percent permanent impairment of the left lower extremity due to a skin disorder caused by the accepted July 30, 2020 employment injury, with residual scarring, nodules, pain, impaired heel and toe walking, and continued use of compression garments and creams.

In contrast, Dr. Hammel, serving as a DMA, opined in an August 16, 2023 report that appellant had one percent permanent impairment of the left lower extremity according to Table 16-3, which pertains to lower extremity permanent impairment related to knee deficits. He noted that he rated appellant's permanent impairment according to a different table than that utilized by Dr. Murphy.

As noted above, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>17</sup> The Board thus finds that there is a conflict in the medical opinion evidence between the opinion of Dr. Murphy, appellant's attending physician, and Dr. Hammel, OWCP's DMA, regarding the nature and extent of appellant's lower extremity permanent impairment.

Because there remains an unresolved conflict in the medical opinion evidence regarding appellant's left lower extremity permanent impairment, pursuant to 5 U.S.C. § 8123(a), the case will be remanded to OWCP for referral of appellant, together with the case record and a SOAF, to a specialist in the appropriate field of medicine for an impartial medical examination to resolve the conflict.<sup>18</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

## CONCLUSION

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

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<sup>17</sup> See *supra* note 15.

<sup>18</sup> *R.J.*, Docket No. 23-0580 (issued April 15, 2024); *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 21, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 20, 2024  
Washington, DC

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

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

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