

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

R.O., Appellant	)	
	)	
and	)	<b>Docket No. 24-0309</b>
	)	<b>Issued: June 24, 2024</b>
	)	
U.S. POSTAL SERVICE, YSLETA POST	)	
OFFICE, El Paso, 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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On February 5, 2024 appellant filed a timely appeal from a January 16, 2024 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.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish greater than 10 percent permanent impairment of each lower extremity, for which he previously received a schedule award.

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

## **FACTUAL HISTORY**

On May 19, 2014 appellant, then a 62-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 17, 2014 he injured his neck, shoulders, knees, and wrist when his right knee buckled as he stepped off a curb while loading a tray of flats into his delivery vehicle, while in the performance of duty.<sup>2</sup> On June 15, 2015 OWCP accepted the claim for lumbar sprain, aggravation of osteoarthritis of the lower legs, and aggravation of adhesive capsulitis of the right shoulder.<sup>3</sup>

On February 22, 2017 appellant underwent OWCP-authorized arthroscopic partial medial and partial lateral meniscectomy of the right knee.

On March 28, 2017 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated July 25, 2018, OWCP granted appellant a schedule award for 10 percent permanent impairment of the right lower extremity. The award ran for 28.8 weeks from April 26 through November 13, 2017, and was based on the December 29, 2017 report of Dr. Morley Slutsky, a Board-certified occupational medicine specialist, serving as an OWCP district medical adviser (DMA).

On October 24, 2019 appellant underwent OWCP-approved left knee arthroscopic partial medial meniscectomy, debridement of chondral lesions, and partial lateral meniscectomy.

On April 15, 2020 appellant filed a Form CA-7 claim for a schedule award for permanent impairment of the left lower extremity.

On July 29, 2020 appellant underwent arthroscopic partial right medial meniscectomy.

By decision dated October 22, 2020, OWCP granted appellant a schedule award for 10 percent permanent impairment of the left lower extremity. The award ran for 28.8 weeks from March 17 through October 4, 2020, and was based on the June 19, 2020 report of Dr. Slutsky, serving as OWCP's DMA reviewing of the March 17, 2020 report by Dr. Michael Mrochek a Board-certified physiatrist.

On November 18, 2020 appellant filed a Form CA-7 claim for an additional schedule award.

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<sup>2</sup> May 17, 2014 bilateral knee x-rays revealed severe bilateral tricompartmental degenerative changes and a small right-sided joint effusion.

<sup>3</sup> On August 13, 2015 appellant underwent OWCP-authorized right shoulder arthroscopy, acromioplasty, mini-open rotator cuff repair, and biceps tenodesis. By decision dated December 7, 2016, OWCP granted appellant a schedule award for seven percent permanent impairment of the right upper extremity. The award ran for 21.84 weeks from February 19 through July 20, 2016.

In a November 18, 2020 impairment rating, Dr. Mrochek opined that appellant reached maximum medical improvement (MMI) of the left lower extremity as of November 18, 2020. He referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>4</sup> and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-3 (Knee Regional Grid), page 509, the class of diagnosis (CDX) for a partial medial meniscectomy resulted in a Class 1 impairment with a default value of 2. Dr. Mrochek assigned a grade modifier for functional history (GMFH) of 1 and a grade modifier for physical examination (GMPE) of 1. He found that a grade modifier for clinical studies (GMCS) was not applicable. Dr. Mrochek applied the net adjustment formula,  $(GMFH - CDX) + (GMPE - CDX) = (1 - 2) + (1 - 2)$ , which he found resulted in no adjustment to the default rating of two percent permanent impairment of the left lower extremity.

On January 4, 2021 OWCP expanded its acceptance of appellant's claim to include internal derangement of the right knee and primary osteoarthritis of the right knee.

On January 4, 2021 OWCP requested that Dr. Hebert White, a physician Board-certified in occupational medicine, serving as a DMA, review a statement of accepted facts (SOAF) and the medical record to determine the appropriate percentage of permanent impairment of the right lower extremity.

In a January 10, 2021 report, Dr. White found appellant had an impairment rating of 10 percent permanent impairment of the right lower extremity. He noted that the range of motion (ROM) method was not permitted as an alternative rating method.

By decision dated January 19, 2021, OWCP denied appellant's additional scheduled award claim.

In an August 25, 2023 impairment rating of the bilateral lower extremities, Dr. Mrochek opined that appellant reached MMI as of June 19, 2023. He noted that the ROM method was not an appropriate rating method for appellant's impairments. Regarding the left and right lower extremities, Dr. Mrochek utilized Table 16-3, page 511 to assign a CDX of Class 2, grade C for total knee arthroplasty with good result, with a default value of 25 percent. He assigned a GMFH of zero, and found no applicable GMPE or GMCS modifiers. Dr. Mrochek applied the net adjustment formula, which reduced the grade from C downward to B, resulting in a 23 percent permanent impairment of the left lower extremity and 23 percent permanent impairment of the right lower extremity.

On September 13, 2023 appellant filed a Form CA-7 claim for an additional schedule award.

On September 28, 2023 OWCP referred appellant, along with the case file, a SOAF, and a series of questions to Dr. Vinod Panchbhavi, a Board-certified orthopedic surgeon, for a second

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<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

opinion medical examination regarding the percentage of permanent impairment of the lower extremities.

In an October 27, 2023 report, Dr. Panchbhavi reviewed the medical record and SOAF. He reported appellant's symptoms of constant bilateral knee pain, weakness, and paresthesias. On examination of the lower extremities, Dr. Panchbhavi observed an inability to heel/toe walk, no sensory deficits, subjective numbness of the lower legs, 3/5 weakness of the leg flexors and extensors, and 4/5 weakness of the hip flexors and extensors, and mild effusion of the bilateral knees. He measured three trials of right knee flexion at 109, 108, and 105 degrees, an 11-degree right flexion contracture, and left knee flexion at 112, 110, and 109 degrees. Dr. Panchbhavi utilized the DBI rating method to find that, under Table 16-3, the CDX for appellant's partial medial and lateral meniscectomy of the right knee resulted in a Class 1, grade C impairment. He assigned a GMFH of 1, a GMPE of 1, and a GMCS of 1. Dr. Panchbhavi utilized the net adjustment formula,  $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (1 - 1) + (1 - 1) = 0$ , which resulted in no net grade adjustment or 10 percent impairment of the right lower extremity. He performed an identical calculation to find 10 percent permanent impairment of the left lower extremity.

On November 21, 2023 OWCP requested that Dr. Arthur S. Harris, a Board certified orthopedic surgeon serving as OWCP's DMA, review a SOAF and the medical record to determine the appropriate percentage of impairment of the lower extremities.

In a November 30, 2023 report, Dr. Harris opined that appellant reached MMI as of October 27, 2023, the date of Dr. Panchbhavi's examination. He concurred with Dr. Panchbhavi's October 27, 2023 impairment rating of 10 percent permanent impairment of each lower extremity utilizing the DBI method under Table 16-3. Dr. Harris noted that appellant had no impairment of either lower extremity originating in the spine.

By decision dated January 16, 2024, OWCP denied appellant's additional schedule award claim.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>5</sup> and its implementing 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. 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>7</sup> As of May 1, 2009, schedule awards are determined in

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> *Id.* See also Ronald R. Kraynak, 53 ECAB 130 (2001).

accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>8</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>9</sup>

The sixth edition of the A.M.A., *Guides* provides for a DBI method of evaluation utilizing the World Health Organization's *International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement*.<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, the relevant portion of the leg for the present case, 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 rating choices, including 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>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 10 percent permanent impairment of each lower extremity, for which he previously received a schedule award.

OWCP granted appellant a schedule award on July 25, 2018 for 10 percent permanent impairment of the right lower extremity based on partial medial and lateral meniscectomy, and on

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<sup>8</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

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

<sup>10</sup> A.M.A., *Guides* 3, section 1.3.

<sup>11</sup> See *id.* at 509, Table 16-3.

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

<sup>13</sup> *Id.* at 23-28.

<sup>14</sup> See *supra* note 9 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).

October 22, 2020 granted appellant a schedule award for 10 percent permanent impairment of the left lower extremity based on partial medial and lateral meniscectomy.

In support of his increased schedule award claim, appellant submitted an impairment evaluation report from Dr. Mrochek dated November 19, 2020 finding a two percent permanent impairment of the left lower extremity, less than the 10 percent previously awarded. Appellant also submitted an impairment evaluation report by Dr. Mrochek dated August 25, 2023 finding a 23 percent permanent impairment of each lower extremity based on bilateral total knee arthroplasties. However, there is no medical evidence of record that appellant underwent total knee arthroplasty of either lower extremity. Medical reports based on an inaccurate history are of limited probative value.<sup>15</sup> Dr. Mrochek's impairment ratings are therefore insufficient to meet appellant's burden of proof.

OWCP referred appellant to Dr. Panchbhavi for a second opinion evaluation regarding the percentage of permanent impairment of the lower extremities. On October 27, 2023 Dr. Panchbhavi utilized the DBI rating method and found that, under Table 16-3, the CDX for partial medial and lateral meniscectomies of each knee resulted in 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, which resulted in no movement of the default grade, to find a 10 percent permanent impairment of each lower extremity.

The DMA, Dr. Harris, who reviewed Dr. Panchbhavi's report, opined that Dr. Panchbhavi properly applied the appropriate elements of the A.M.A., *Guides* to the findings noted on clinical examination to assign a 10 percent permanent impairment of each lower extremity. Dr. Harris' report thus carries the weight of the medical evidence and establishes that appellant had 10 percent permanent impairment of each lower extremity for which appellant previously received schedule award compensation.<sup>16</sup>

As the medical evidence is insufficient to establish greater than the 10 percent permanent impairment of each 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.

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<sup>15</sup> See *B.C.*, Docket No. 24-0036 (issued March 19, 2024); *S.B.*, Docket No. 21-0646 (issued July 22, 2022); *D.H.*, Docket No. 21-0537 (issued October 18, 2021); *T.B.*, Docket No. 17-0304 (issued May 16, 2017); *S.R.*, Docket No. 14-1086 (issued February 26, 2015) (medical conclusions based on an incomplete or inaccurate factual background are of limited probative value).

<sup>16</sup> *P.M.*, Docket No. 24-0057 (issued April 15, 2024).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish greater than 10 percent permanent impairment of each lower extremity, for which he previously received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 16, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 2024  
Washington, DC

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

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

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