United States Department of Labor
Employees' Compensation Appeals Board

C.E., Appellant	)	
and	)	**Docket No. 24-0422**
	)	**Issued: June 20, 2024**
U.S. POSTAL SERVICE, DALLAS PROCESSING & DISTRIBUTION CENTER, Dallas, 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
JANICE B. ASKIN, Judge

JURISDICTION

On March 13, 2024 appellant filed a timely appeal from a February 7, 2024 merit 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.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the February 7, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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*.

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than 11 percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

FACTUAL HISTORY

On November 22, 2011 appellant, then a 61-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she developed knee and shoulder conditions due to factors of her federal employment, including repetitive pushing and pulling of equipment, lifting trays above her shoulders, and walking, standing, stooping, and bending in her employment as an automated clerk. She noted that she first became aware of her condition on September 25, 2010 and realized its relation to her federal employment on November 16, 2011. Appellant stopped work on November 2, 2011. By decision dated March 5, 2012, OWCP accepted her claim for right shoulder strain and left knee strain.[3] By decision dated March 26, 2013, it expanded the acceptance of appellant's claim to include the additional conditions of sprain of other specified sites of the left knee and leg, sprain of other specified sites of the right shoulder and upper arm, and tear of the posterior horn of the left medial meniscus.

On August 26, 2013 Dr. Khawaja Nimr Ikram, a Board-certified orthopedic surgeon, performed an OWCP-authorized diagnostic upper arthroscopy with partial medial meniscectomy, chondroplasty of the medial femoral condyle, the patella, the trochlear, and a partial synovectomy to the left knee on that date. He diagnosed partial tear to the posterior horn of the medial meniscus, as well as grade 3 to 4 chondromalacia to the medial femoral condyle, the trochlear, and the patella and synovitis to the left knee.

On August 19, 2014 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In support thereof, appellant submitted an August 19, 2014 report from Dr. Jeff Fritz, a Board-certified anesthesiologist. Dr. Fritz referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[4] and utilized the range of motion (ROM) rating method to determine that appellant had 11 percent permanent impairment of the left lower extremity.

On January 5, 2015 Dr. Henry Mobley, a Board-certified internist serving as an OWCP district medical adviser (DMA), reviewed Dr. Fritz's August 19, 2014 report and concurred with his finding that appellant had 11 percent permanent impairment of the left lower extremity utilizing the ROM rating method.

By decision dated April 23, 2015, OWCP granted appellant a schedule award for 11 percent permanent impairment of the left lower extremity (left leg). The award ran for 31.68 weeks

[3] Appellant retired effective January 31, 2013.

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

from August 19, 2014 through March 28, 2015, and was based on the August 19, 2014 report of Dr. Fritz and the January 5, 2015 report of Dr. Mobley, OWCP's DMA.[5]

On August 9, 2023 appellant filed a Form CA-7 for an additional schedule award)

In support thereof, appellant submitted a March 28, 2022 impairment rating from Dr. Marvin Van Hal, a Board-certified orthopedic surgeon. In his report, Dr. Van Hal discussed appellant's physical examination findings for the purposes of an evaluation of lower extremity permanent impairment. He noted appellant's diagnoses of left knee sprain now status post-surgical intervention for medial meniscus tear with subsequent need for visco-supplementation and reported that appellant had permanent limitations as a result of her injuries. Dr. Van Hal referred to the sixth edition of the A.M.A., *Guides* 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 appellant's partial medial meniscectomy resulted in a Class 1 impairment with a default value of two. He assigned a grade modifier for functional history (GMFH) of 1 for continued pain and a grade modifier for physical examination (GMPE) of 1 due to mild motion loss without instability. Dr. Van Hal found that a grade modifier for clinical studies (GMCS) was not applicable as the diagnostic studies were used to identify the impairment value. He utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) = (1 - 1) + (1 - 1) = 0, which resulted in a grade B or two percent permanent impairment of the left lower extremity. Dr. Van Hal then utilized the ROM methodology and applied Table 16-23, page 549, to find that appellant's left knee ROM resulted in 10 percent permanent impairment. He opined that she should receive the higher ROM rating amounting to 10 percent permanent impairment of the left lower extremity. Dr. Van Hal further found that appellant had reached maximum medical improvement (MMI) as of the date of his report.

On October 19, 2023 OWCP requested that Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as an OWCP DMA, review the case to determine whether appellant sustained a permanent impairment of the left lower extremity and to identify a date of MMI.

In a November 2, 2023 report, Dr. Hammel utilized the DBI rating method to find that, under Table 16-3, the CDX for appellant's left partial medial meniscectomy fell under a Class 1 impairment with a default value of two percent. He assigned a GMFH of 1 based on continued pain and a GMPE of 1 based on mild motion loss. Dr. Hammel excluded GMCS from the formula as it was used for class placement. He utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) = (1 - 1) + (1 - 1) = 0, which resulted in a default grade C or two percent permanent impairment of the left lower extremity. Dr. Hammel indicated that the ROM impairment method was not applicable regarding appellant's lower extremity conditions and did not meet the criteria for applying the ROM in accordance with section 16.7, page 543 of the A.M.A., *Guides*. He concluded that appellant had two percent permanent impairment of the left lower extremity and determined that appellant had reached MMI on March 28, 2022.

[5] The record reflects that, by decision dated March 10, 2014, OWCP granted appellant a schedule award for two percent permanent impairment of the right upper extremity (right arm). By decision dated February 15, 2022, it granted her schedule award compensation for an additional five percent permanent impairment of the right upper extremity, for a total seven percent permanent impairment of the right upper extremity.

By decision dated February 7, 2024, OWCP denied appellant's claim for an increased schedule award, finding that she was not entitled to greater than the 11 percent permanent impairment of the left lower extremity previously awarded.

LEGAL PRECEDENT

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 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.[9]

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 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.[10] 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.[11]

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).[12]

[6] 5 U.S.C. § 8107.

[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); 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 and Exhibit 1 (January 2010).

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

[10] A.M.A., *Guides* 497, section 16.2.

[11] *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).

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

Under each 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).[13] 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.[14]

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.[15]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than 11 percent permanent impairment of the left lower extremity, for which she previously received schedule award compensation.

In a report dated November 2, 2023 report, Dr. Hammel, OWCP's DMA, utilized the DBI rating method finding that, under Table 16-3 (Knee Regional Grid) on page 509, the CDX for the left partial medial meniscectomy resulted in a Class 1 impairment with a default value of two. He assigned a GMFH of 1 due to continued pain and a GMPE of 1 based on mild motion loss. Dr. Hammel excluded GMCS from the net adjustment formula as it was used for class placement. He utilized the net adjustment formula, (GMFH – CDX) + (GMPE – CDX) = (1 – 1) + (1 – 1) = 0, which resulted in a grade C or two percent permanent impairment of the left lower extremity. He further explained that appellant's lower extremity conditions did not meet the criteria for applying the ROM impairment rating method.[16]

The Board finds that the well-rationalized reports of Dr. Hammel 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.[17] 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.[18] In support of her claim for an increased schedule award, appellant submitted a March 28, 2022 impairment rating from Dr. Van Hal. However, he applied the net adjustment

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

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

[15] *See supra* note 8 at Chapter 2.808.6(f) (March 2017). *See also D.J.*, Docket No. 19-0352 (issued July 24, 2020).

[16] Table 16-3 does not provide for use of the ROM method to rate a claimant's lower extremity impairment. *Id*.

[17] *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).

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

formula and also found a rating of two percent permanent impairment of the left lower extremity using the DBI methodology.

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 11 percent permanent impairment of the left lower extremity previously awarded, the Board finds that appellant has not met her burden of proof to establish entitlement to additional schedule award compensation.[19]

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 11 percent permanent impairment of her left lower extremity, for which she previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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