

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

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E.S., Appellant)	
)	
and)	Docket No. 24-0494
)	Issued: June 14, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS AND BORDER PROTECTION,)	
Tucson, AZ, Employer)	
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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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 10, 2024 appellant filed a timely appeal from a March 15, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.2(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of his oral argument request, appellant asserted that he did not understand why he was not given a rating for loss of range of motion as his right knee. He also noted that he had undergone arthroscopic surgery on his knee. The Board, in exercising its discretion, denies appellant's request for oral argument as the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than three percent permanent impairment of the right lower extremity (leg), for which he previously received a schedule award.

FACTUAL HISTORY

On March 15, 2022 appellant, then a 38-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a right knee injury during firearms qualifications training while in the performance of duty. OWCP accepted the claim for chondromalacia patellae, right knee; chondromalacia, right knee, other, plica syndrome, right knee; and sprain of other specified parts of right knee, initial encounter.

On February 27, 2023 appellant underwent OWCP-authorized right knee arthroscopy with chondroplasty of the chondral defect lateral femoral trochlea, patella, and lateral tibia plateau; resection of the medial and suprapatellar plica; and arthroscopic lateral retinacular release.

In a December 20, 2023 report, Dr. Gregory L. Peare, a Board-certified orthopedic surgeon, advised that appellant could return to regular work. He noted that appellant still had two centimeters of atrophy of his right quadriceps and slight weakness when descending. Dr. Peare opined that appellant's maximum medical improvement (MMI) was to be determined. He estimated three to four percent permanent impairment of the right knee.

On December 21, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated January 4, 2024, OWCP informed appellant that additional medical evidence was necessary to establish his schedule award claim. It advised him of the type of medical evidence necessary, including a permanent impairment rating utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³ OWCP afforded him 30 days to submit the evidence.

OWCP thereafter received a December 20, 2023 progress report from Dr. Pearce. On physical examination Dr. Pearce again noted appellant's right knee atrophy, as well as a little crepitus with flexion and extension. He recounted that appellant was status post right knee arthroscopy. Dr. Pearce noted that he had reached a stationary point, and his permanent impairment would be evaluated using the A.M.A., *Guides*. He estimated that appellant had three to four percent permanent impairment of the right lower extremity.

On February 23, 2024, OWCP forwarded Dr. Pearce's report, along with a statement of accepted facts (SOAF), to Dr. Nathan Hammel, a Board-certified orthopedic surgeon and serving as a district medical adviser (DMA), for a review and opinion on the extent of any employment-related permanent impairment of appellant's right lower extremity under the A.M.A., *Guides*.

³ A.M.A., *Guides* (6th ed. 2009).

In a March 6, 2024 report, Dr. Hammel indicated that he had reviewed the SOAF and the medical record, including Dr. Pearce's December 20, 2023 report. He utilized the diagnosis-based impairment (DBI) rating methodology under the A.M.A., *Guides*, Table 16-3, Knee Regional Grid, page 509, and determined the class of diagnosis (CDX) for patellofemoral arthritis was a Class 1 impairment with a default value of three percent. Dr. Hammel assigned a grade modifier for functional history (GMFH) of 1 for right knee pain, and a grade modifier for physical examination (GMPE) of 1 for atrophy. He noted that a grade modifier for clinical studies (GMCS) was not applicable as it was used to determine the CDX. He utilized the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) = (1-1) + (1-1) = 0$, which resulted in a final rating of three percent permanent impairment of the right lower extremity. Dr. Hammel noted that the accepted conditions of appellant's claim were not eligible for the alternative range of motion (ROM) rating methodology under the A.M.A., *Guides*. He explained the A.M.A., *Guides* only allow for lower extremity ROM-based impairment rating in cases of severe organic motion loss not ascribable to a specific diagnosis-based impairment. Dr. Hammel noted that Dr. Pearce did not provide impairment rating calculations; however, Dr. Pearce estimated three to four percent permanent impairment which was consistent with his impairment rating of three percent. He indicated that appellant reached MMI on December 20, 2023, the date of Dr. Pearce's examination.

By decision dated March 15, 2024, OWCP granted appellant a schedule award for three percent permanent impairment of his right lower extremity (leg). The schedule award ran for 8.64 weeks from December 20, 2023 through February 18, 2024, and was based on Dr. Pearce's December 20, 2023 report and Dr. Hammel's March 6, 2024 report.

LEGAL PRECEDENT

The schedule award provisions of FECA⁴ and its implementing regulations⁵ 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 of loss of a member shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants and the Board has concurred in such adoption.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.⁷

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

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a); see *D.T.*, Docket No. 24-0126 (issued April 3, 2024); *R.M.*, Docket No. 20-1278 (issued May 4, 2022); see also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5.a (March 2017); *id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

is made to Table 16-3 (Knee Regional Grid) beginning on page 509.⁸ After the CDX is determined from the Knee Regional Grid (including identification of a default grade value), the net adjustment formula is applied using a GMFH, GMPE, and/or GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁹ 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.¹⁰

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than three percent permanent impairment of the right lower extremity (leg), for which he previously received a schedule award.

In a December 30, 2023 report, Dr. Pearce, appellant's treating physician, provided examination findings. Without referring to any particular section of the A.M.A., *Guides*, he estimated that appellant had three to four percent permanent impairment of the right lower extremity. As Dr. Pearce did not provide an impairment rating in accordance with the A.M.A., *Guides*, his report is insufficient to establish a ratable permanent impairment of the right lower extremity.¹²

In accordance with its procedures, OWCP properly referred the evidence of record to the DMA, Dr. Hammel, for review and an impairment rating in accordance with the A.M.A., *Guides*. In a March 6, 2024 report, Dr. Hammel applied the A.M.A., *Guides* and concluded that appellant had a three percent permanent impairment of the right lower extremity. He utilized the DBI-rating method to find that under Table 16-3 (Knee Regional Grid), appellant had a Class 1 impairment for a CDX of patellofemoral arthritis, which resulted in a default value of three percent. Dr. Hammel assigned a GMFH of 1 and a GMPE of 1 and applied the net adjustment formula, which resulted in a final impairment rating of three percent permanent impairment of the right lower extremity. He explained that the ROM methodology was not applicable to appellant's condition and noted that appellant reached MMI on December 20, 2023, the date of Dr. Pierce's

⁸ See A.M.A., *Guides* (6th ed. 2009) 509-11.

⁹ *Id.* at 515-22.

¹⁰ *Id.* at 23-28.

¹¹ *Supra* note 7 at Chapter 2.808.6f (March 2017).

¹² See *M.M.*, Docket No. 17-0197 (issued May 1, 2018).

report. The Board has reviewed Dr. Hammel's impairment rating and finds that he properly applied the A.M.A., *Guides* to the findings from Dr. Pearce's December 20, 2023 report.¹³

As the medical evidence of record is insufficient to establish greater than the three percent permanent impairment of the right 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than three percent permanent impairment of the right lower extremity (leg), for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy 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

¹³ See *A.F.*, Docket No. 23-0325 (issued July 28, 2023); see also *R.S.*, Docket No. 21-0833 (issued January 25, 2022).