

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

S.G., Appellant)

and)

U.S. POSTAL SERVICE, GREENS NORTH)
POST OFFICE, Houston, TX, Employer)
-----)

Docket No. 24-0529
Issued: June 12, 2024

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 April 22, 2024 appellant filed a timely appeal from a February 15, 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 over the merits of this case.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the February 15, 2024 decision, OWCP received additional evidence. 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 June 25, 2021 appellant, then a 47-year-old collect and delivery employee, filed a traumatic injury claim (Form CA-1) alleging that on June 23, 2021 she injured her left knee delivering parcels while in the performance of duty. OWCP accepted the claim for left knee chondromalacia and a sprain/tear of the anterior cruciate ligament (ACL) of the left knee. Appellant stopped work on June 23, 2021. OWCP paid her wage-loss compensation for disability on the supplemental rolls effective June 14, 2022, and on the periodic rolls from November 6, 2022 through November 14, 2023. Appellant returned to full-time modified employment on November 15, 2023.

An August 23, 2021 magnetic resonance imaging (MRI) scan of the left knee demonstrated grade II to III chondromalacia of the patellofemoral compartment and fluid in the semimembranosus-medial gastrocnemius bursa and pes anserine tendons.

On September 13, 2022 Dr. Ian Reynolds, a Board-certified orthopedic surgeon, performed an arthroscopic ACL reconstruction of the left knee with cadaver graft.

A March 10, 2023 MRI scan of the left knee revealed past ACL reconstruction status with an intact ACL graft, a grade III tear of the lateral meniscus involving the body, posterior and anterior horns, grade II signal in the body and posterior horn of the medial meniscus, and mild effusion with a Baker's cyst.

On April 13, 2023 Dr. Reynolds performed a left knee arthroscopy with inspection of the ACL grade and a partial resection of the lateral meniscus.

On July 24, 2023 Dr. Reynolds diagnosed status post ACL reconstruction of the left knee with good results. He noted that appellant continued to wear a brace.

In an August 8, 2023 impairment evaluation, Dr. Reynolds discussed appellant's history of an ACL reconstruction with graft on September 1, 2022 as a result of a June 23, 2021 employment injury and subsequent April 10, 2023 lateral partial meniscectomy on the left knee. On examination of the left knee, he found reduced motion and strength, pain with palpation, and two centimeters of left quadriceps atrophy compared to the right. Dr. Reynolds found full strength on manual muscle testing of the lower extremities and measured left knee range of motion (ROM). He diagnosed a left ACL tear status-post reconstruction and a left knee lateral meniscal tear, status-post partial meniscectomy. Referencing Table 16-3 on page 510 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*,³ Dr. Reynolds identified the class of diagnosis (CDX) as a cruciate injury with mild laxity, resulting in a Class I impairment, which yielded a default value of 10 percent. He applied a grade modifier for functional history (GMFH) of 2 for a moderate deficit on the functional scale; a grade modifier for physical examination (GMPE) of 2 for moderate loss of motion and muscle atrophy; and found that a grade modifier for clinical studies (GMCS) was used to identify the condition and thus inapplicable. Dr. Reynolds found a net adjustment of 2 resulting in 12 percent permanent impairment of the left lower extremity.

³ A.M.A., *Guides* (6th ed. 2009).

On September 11, 2023 Dr. Reynolds noted that appellant had continued knee pain and some mild swelling but no medial or lateral laxity in full extension or with 30 degrees flexion. He further noted normal lateral laxity. Dr. Reynolds indicated that appellant could likely be released from treatment as having reached maximum medical improvement (MMI) but she wanted to continue physical therapy treatments. On October 11, 2023 he found that her ACL was stable but that she had symptomatic chondromalacia of the left knee.

On December 29, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On February 8, 2024 Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), identified the CDX as a lateral meniscal injury with partial meniscectomy, which yielded a default value of two percent according to Table 16-3 on page 509 of the A.M.A., *Guides*. He indicated that using the CDX of an ACL reconstruction without residual instability yielded no impairment. Dr. Hammel applied a GMFH of one for antalgic gait; a GMPE of one for motional loss and tenderness; and found a GMCS inapplicable as it was used to determine the class, which yielded a net adjustment of zero and two percent permanent impairment of the left lower extremity. He noted that immediately prior to the impairment evaluation, Dr. Reynolds had not found residual laxity and thus the meniscal injury was the impairing diagnosis rather than an impairment that required residual laxity. Dr. Hammel opined that appellant had reached MMI on August 8, 2023.

By decision dated February 15, 2024, OWCP granted appellant a schedule award for two percent permanent impairment of the left lower extremity. The period of the award ran for 5.76 weeks from November 15 to December 25, 2023.

LEGAL PRECEDENT

The schedule award provision of FECA,⁴ and its implementing federal regulation,⁵ 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 way 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 2009.⁶ 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.⁷

⁴ *Supra* note 1.

⁵ 20 C.F.R. § 10.404.

⁶ 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 2.808.6 (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁷ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's *International Classification of Functioning Disability and Health (ICF): A Contemporary Model of Disablement*.⁸ Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by grade modifiers based on a GMFH, GMPE, and/or GMCS.⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰ Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹¹

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.¹²

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."¹³ 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.¹⁴

ANALYSIS

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

In an impairment evaluation dated August 8, 2023, Dr. Reynolds, appellant's attending physician, discussed his treatment of appellant, including performing an ACL reconstruction with graft of the left knee on September 1, 2023, and left lateral partial meniscectomy on April 10, 2023. He diagnosed a left ACL tear status-post reconstruction and a left knee lateral meniscal tear, status-post partial meniscectomy. On examination, Dr. Reynolds observed reduced motion and strength, pain with palpation, and two centimeters of left quadriceps atrophy. Using Table 16-3 on page 510 of the A.M.A., *Guides*, he identified the CDX as a cruciate injury with mild laxity, resulting in a Class 1 impairment, which yielded a default value of 10 percent. Dr. Reynolds applied a

⁸ A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3.

⁹ *Id.* at 494-531.

¹⁰ *Id.* at 411.

¹¹ *See J.S.*, Docket No. 23-0579 (issued January 30, 2024); *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹² *See supra* note 6 at Chapter 2.808.6f (March 2017).

¹³ 5 U.S.C. § 8123(a).

¹⁴ 20 C.F.R. § 10.321; *see R.J.*, Docket No. 23-0580 (issued April 15, 2024); *V.B.*, Docket No. 19-1745 (issued February 25, 2021); *K.C.*, Docket No. 19-1251 (issued January 24, 2020).

GMFH and a GMPE of 2, and found that a GMCS was not applicable, which yielded a net adjustment of 2 or 12 percent permanent impairment of the left lower extremity.¹⁵

On February 8, 2024 Dr. Hammel, the DMA, identified the CDX as a lateral meniscal injury with partial meniscectomy, which yielded a default value of two percent using Table 16-3 on page 509 of the A.M.A., *Guides*. He applied a GMFH of 1 for antalgic gait; a GMPE of 1 for motional loss and tenderness; and found a GMCS inapplicable as it was used to determine the class, which yielded a net adjustment of zero or two percent permanent impairment of the left lower extremity. Dr. Hammel advised that his impairment rating differed from that of Dr. Reynolds as he found that appellant had no laxity and thus no ratable impairment using the CDX of an ACL reconstruction.

As the physicians' opinions are of equal weight regarding their interpretation of the A.M.A., *Guides*, the Board finds that a conflict of medical opinion exists between Dr. Reynolds and the DMA, Dr. Hammel, regarding the extent of appellant's permanent impairment.¹⁶ Therefore, referral to an impartial medical examiner (IME) for resolution of the conflict is required in accordance with 5 U.S.C. § 8123(a).¹⁷

On remand, OWCP shall refer appellant, along with an updated SOAF and the medical record, to a specialist in the appropriate field of medicine, for a reasoned opinion regarding the extent of permanent impairment of appellant's left lower extremity.¹⁸ 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.

¹⁵ Utilizing the net adjustment formula discussed above, (GMFH - CDX) + (GMPE - CDX), or (2-1) + (2-1) = 2, yielded a net adjustment of 2.

¹⁶ *M.G.*, Docket No. 19-1627 (issued April 17, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *James P. Roberts*, 31 ECAB 1010 (1980).

¹⁷ 5 U.S.C. § 8123(a).

¹⁸ *See S.W.*, Docket No. 22-0917 (issued October 26, 2022); *K.D.*, Docket No. 19-0281 (issued June 30, 2020).

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2024 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 12, 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