

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

M.B., Appellant)	
)	
and)	Docket No. 23-0699
)	Issued: May 29, 2024
U.S. POSTAL SERVICE, DOWNTOWN)	
CORPUS CHRISTI POST OFFICE,)	
Corpus Christi, TX, Employer)	
)	

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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 29, 2023 appellant filed a timely appeal from February 1 and March 14, 2023 merit decisions 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award; and (2) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 14, 2023, as she no longer had disability or residuals causally related to her accepted August 9, 2019 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 12, 2019 appellant, then a 70-year-old lead sales and service distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on August 9, 2019 she sustained a left shoulder injury when she tripped over a tub on the workroom floor and fell to the floor while in the performance of duty. She stopped work on August 9, 2019. By decision dated September 3, 2019, OWCP accepted appellant's claim for other sprain of left shoulder joint and sprain of other specified parts of the left knee.²

In a September 12, 2019 medical report, Dr. Thomas Martens, an osteopath specializing in family medicine, reported that appellant sustained a work-related injury on August 9, 2019 when she tripped over a tub of mail causing her to stumble and fall, impacting her left shoulder and left knee on the ground resulting in the accepted conditions of left shoulder and left knee sprain. He noted that August 20, 2019 magnetic resonance imaging (MRI) scans of the left shoulder and left knee revealed an impression of supraspinatus/infraspinatus tear and acute fracture of the acromial process and medial meniscus tear, consequential to the primary accepted conditions of left shoulder sprain and left knee sprain. Dr. Martens opined that appellant's MRI scan findings of left shoulder supraspinatus/infraspinatus tear and acute fracture of the acromial process and left knee medial meniscus tear were directly caused by the August 9, 2019 employment injury based on the mechanism of injury and no other intervening factors.³

In an August 13, 2020 medical report, Dr. Justin Klimisch, a Board-certified orthopedic surgeon, recommended a left total knee replacement as a result of ongoing residuals from the August 9, 2019 employment injury. He noted intermittent pain for the last three years across the anterior, medial, and posterior aspect of the knee, which limited appellant's ability to walk more than one block or climb stairs less she used a rail. Dr. Klimisch explained that an August 20, 2019 MRI scan of the left knee taken immediately following the August 9, 2019 employment injury revealed a large radial root tear at the posterior horn medial meniscus with associated extrusion of the body of the medial meniscus.

On March 23, 2021 OWCP referred the case record and a statement of accepted facts (SOAF) to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), for review and an opinion on whether the left knee total replacement procedure proposed by Dr. Klimisch was medically warranted and causally related to the accepted,

² Appellant had previously filed a Form CA-1 for an August 19, 2010 work-related left shoulder injury when she pulled a lobby door that would not roll, experiencing a sharp pain in her shoulder. OWCP assigned that claim OWCP File No. xxxxxx332 and accepted it for sprain of left shoulder and upper arm acromioclavicular; sprain of left shoulder and upper arm other specified sites; disorder of bursae and tendons in left shoulder region; and sprain of left shoulder and upper arm rotator cuff tear. The record also reflects an October 3, 2013 work-related injury accepted by OWCP for right sprain of knee lateral collateral ligament and right lower leg traumatic arthropathy under OWCP File No. xxxxxx807. On August 11, 2014 appellant underwent a right knee arthroscopy with a partial medial meniscectomy and debridement of articular cartilage with multiple right knee compartments. On June 8, 2015 she underwent a right total knee arthroplasty. Appellant's claims have not been administratively combined.

³ The record reflects that on August 10, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award. By decision dated June 15, 2021, OWCP granted appellant a schedule award for 12 percent permanent impairment of the left upper extremity (shoulder), less the six percent previously awarded under OWCP File No. xxxxxx332. The award ran for 18.72 weeks from July 15 through November 23, 2020.

work-related medical conditions. It also requested additional information as to the results of recent diagnostic studies documenting the extent of degenerative changes in the left knee.

In a March 26, 2021 report, Dr. Harris reported that appellant's August 20, 2019 MRI scan demonstrated medial meniscal tear and degenerative changes. He noted review of Dr. Klimisch's August 15, 2020 report who recommended left total knee arthroplasty. Dr. Harris reported that the medical record established the diagnoses of left knee medial meniscal tear and osteoarthritis. He reported that the medical record documented appellant's treatment for a work-related left knee injury, which resulted in symptomatic osteoarthritis. However, Dr. Harris noted that Dr. Klimisch's report did not document the results of any recent diagnostic studies demonstrating the extent of degenerative changes or joint space narrowing in the knee. He concluded that there was insufficient information in the medical record and requested additional information from Dr. Klimisch regarding the results of recent diagnostic studies documenting the extent of degenerative changes in the left knee.

On April 14, 2021 appellant underwent left total knee arthroplasty. The surgery was not authorized by OWCP.

In a development letter dated May 14, 2021, OWCP requested that appellant provide a copy of the DMA's April 12, 2021 medical report to her physician, Dr. Klimisch, for comment and review. It afforded her 30 days to submit the requested information. Dr. Klimisch did not respond.

Appellant subsequently submitted an April 21, 2022 medical report from Dr. Stephen Bell, a Board-certified orthopedic surgeon, who examined appellant for a lower extremity impairment rating. Dr. Bell indicated that he reviewed the medical evidence of record and provided findings on physical examination, including range of motion (ROM) measurements for the left knee. He reported that appellant underwent a left total knee arthroplasty on April 14, 2021, and had reached maximum medical improvement (MMI). Dr. Bell 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 diagnosis-based impairment (DBI) rating method to find that, under Table 16-3 (Knee Regional Grid), page 511, the class of diagnosis (CDX) for appellant's left total knee replacement, resulted in a Class 2 impairment with a default value of 25 percent. He assigned a grade modifier for functional history (GMFH) of 1 based on antalgic gait, a grade modifier for physical examination (GMPE) of 1 based on a mild problem, and a grade modifier for clinical studies (GMCS) of 3 based on the August 20, 2019 left knee MRI scan revealing a severe problem. Dr. Bell utilized the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 2) + (1 - 2) + (3 - 2) = -1$, which resulted in a grade B or 23 percent permanent impairment of the left lower extremity.

On July 15, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

⁴ A.M.A., *Guides* (6th ed. 2009).

On July 20, 2022 OWCP requested Dr. James W. Butler, a Board-certified occupational medicine specialist, serving as an OWCP DMA, review the case for a determination on whether appellant sustained permanent impairment of the left lower extremity and the date of MMI.

In an August 24, 2022 report, Dr. Butler determined that appellant had reached MMI on April 21, 2022. He utilized the DBI rating method to find that, under Table 16-3, the CDX for appellant's left total knee arthroplasty, resulted in a class 2 impairment with a default value of 25 percent. Dr. Butler assigned a GMFH of 1 based on antalgic gait, and a GMPE of 1 based on muscle atrophy on the left knee when compared to the right. He did not assign a grade modifier for GMCS as the medical record contained no clinical studies following the knee replacement, noting that the only studies available predated the surgery and were no longer applicable to appellant's MMI. Dr. Butler utilized the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) = (1 - 2) + (1 - 2) = -2$, which resulted in a grade A or 21 percent permanent impairment of the left lower extremity. He disagreed with Dr. Bell's assignment of a grade modifier for GMCS, explaining that the only studies available predated appellant's surgery and were no longer applicable to her April 21, 2022 date of MMI. Dr. Butler also noted that the ROM impairment method was not applicable in accordance with section 16.7, page 543 of the A.M.A., *Guides*.

On December 7, 2022 OWCP referred appellant, along with the case record, a SOAF, and a series of questions to Dr. Walter Del Gallo, a Board-certified orthopedic surgeon, for a second opinion evaluation and determination regarding whether she had any disability or residuals causally related to the accepted August 9, 2019 employment injury. It also requested that he provide an opinion on the medical necessity of the left total knee replacement as it related to the accepted August 9, 2019 employment injury. OWCP requested that, if he opined that the left total knee replacement was medically necessary, he should provide an impairment rating for the left lower extremity.

On January 5, 2023 Dr. Del Gallo evaluated appellant for the purpose of the second opinion evaluation. In his report, he documented appellant's physical examination findings and discussed her history of injury. Dr. Del Gallo opined that appellant's work-related left shoulder and left knee sprain had resolved, noting that his clinical examination revealed no objective findings that would support her continued subjective complaints or history of injury. He explained that appellant's current conditions were caused by preexisting age-related degenerative left shoulder conditions and left knee osteoarthritis, which were not related to the August 9, 2019 employment injury. Dr. Del Gallo discussed appellant's medical history explaining that she had preexisting left shoulder degenerative diagnoses resulting in a prior left shoulder rotator cuff repair. He further explained that the left total knee replacement that was performed on April 14, 2021, was a result of a preexisting medical condition and not associated with appellant's work-related injury, noting that she had preexisting osteoarthritis of both knees and previously underwent bilateral total knee replacements due to a nonwork-related osteoarthritis condition. Dr. Del Gallo reported that the mechanism of injury, medical records, diagnostic testing, and physical examination findings did not indicate that the August 9, 2019 employment injury of tripping over a tub of mail caused, worsened, precipitated, or aggravated any osteoarthritis or arthropathy of the left knee requiring a total knee replacement. He found that the August 9, 2019 left shoulder sprain and left knee sprain should have resolved within a period of a few days to at most three months. As the left total knee replacement was not medically necessary due to the August 9, 2019 employment injury,

Dr. Del Gallo declined to provide an impairment rating of the left knee. He concluded that appellant could return to full-duty work and no further treatment was medically warranted.

By decision dated February 1, 2023, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

On February 6, 2023 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because she no longer had any disability or residuals causally related to her accepted August 9, 2019 employment injury. It found that the weight of the medical evidence rested with Dr. Del Gallo who found that she no longer had any disability or residuals causally related to her accepted August 9, 2019 employment injury. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination of benefits.

By decision dated March 14, 2023, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that same date. It found that the weight of the medical evidence rested with Dr. Del Gallo, the second opinion examiner, who indicated that she no longer had disability or residuals due to her accepted August 9, 2019 employment injury.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA,⁵ and its implementing federal regulations,⁶ 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 2009.⁷ 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.⁸

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 diagnosis-based impairment where impairment class is determined by the diagnosis and specific criteria as adjusted by the GMFH, GMPE, and GMCS.

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. *Supra* note 3; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

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

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.⁹ 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.¹⁰

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).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 $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$.¹² 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.¹³

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.¹⁴

ANALYSIS -- ISSUE 1

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

In an August 24, 2022 report, Dr. Butler, OWCP's DMA, utilized the DBI rating method to find that, under Table 16-3, the CDX for appellant's left total knee arthroplasty, resulted in a class 2 impairment with a default value of 25 percent. He assigned a GMFH of 1 based on antalgic gait, and a GMPE of 1 based on muscle atrophy on the left knee when compared to the right. Dr. Butler did not assign a grade modifier for GMCS as the medical record contained no clinical studies following the knee replacement, noting that the only studies available predated the surgery and were no longer applicable to appellant's MMI. He utilized the net adjustment formula and found 21 percent permanent impairment of the left lower extremity. Dr. Butler also noted that the

⁹ A.M.A., *Guides* 497, section 16.2.

¹⁰ *Id.* at 543; *see also* *N.B.*, Docket No. 22-1295 (issued May 25, 2023); *M.D.*, Docket No. 16-0207 (issued June 3, 2016); *D.F.*, Docket No. 15-0664 (issued January 8, 2016).

¹¹ *Id.* at 509-11.

¹² *Id.* at 515-22.

¹³ *Id.* at 23-28.

¹⁴ *See supra* note 7 at Chapter 2.808.6(f) (March 2017). *See also* *D.J.*, Docket No. 19-0352 (issued July 24, 2020).

ROM impairment method was not applicable in accordance with section 16.7, page 543 of the A.M.A., *Guides*.

On December 7, 2022 OWCP referred appellant, along with the case record, a SOAF, and a series of questions to Dr. Del Gallo for a second opinion evaluation. OWCP requested, *inter alia*, that he provide an impairment rating for the left lower extremity only if he opined that appellant's arthroplasty was medically necessary. On January 5, 2023 Dr. Del Gallo opined that appellant's current conditions were caused by preexisting age-related degenerative conditions, which were not related to the August 9, 2019 employment injury. He explained that the left total knee replacement that was performed on April 14, 2021, was a result of a preexisting medical condition and not associated with appellant's work-related injury, noting that she had preexisting osteoarthritis of both knees and previously underwent bilateral total knee replacements due to a nonwork-related osteoarthritis condition. Accordingly, Dr. Del Gallo declined to provide an impairment rating of the left knee.

OWCP, however, did not refer appellant's file, including Dr. Del Gallo's January 5, 2023 report, back to a DMA, for review and comment prior to issuing the February 1, 2023 decision. As noted above, OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's 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.¹⁵

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹⁶ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁷

The Board shall, therefore, remand this case for OWCP to route the file, including Dr. Del Gallo's January 5, 2023 report, to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*.¹⁸ Following this and other such further development as deemed necessary, it shall issue a *de novo* decision regarding appellant's schedule award claim.

¹⁵ *Id.*; *R.M.*, Docket No. 18-1313 (issued April 11, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010).

¹⁶ *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

¹⁷ *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁸ *E.M.*, Docket No. 23-0848 (issued November 29, 2023).

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.¹⁹ After it has been determined that an employee has a disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²⁰ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.²¹

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.²² To terminate authorization for medical treatment, OWCP must establish that he or she no longer has residuals of an employment-related condition which require further medical treatment.²³

ANALYSIS -- ISSUE 2

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 14, 2023, as she no longer had disability or residuals causally related to her accepted August 9, 2019 employment injury.

In a January 5, 2023 report, Dr. Del Gallo, serving as the second opinion physician, reviewed appellant's history of injury, provided physical examination findings, and opined that her left shoulder sprain and left knee sprain had resolved. He explained that appellant's current conditions were caused by preexisting age-related degenerative left shoulder condition and left knee osteoarthritis, which were not related to the August 9, 2019 employment injury. Dr. Del Gallo opined that appellant's work-related left shoulder sprain and left knee sprain resolved within three months. He concluded that no further medical treatment was necessary, and she could return to full-duty work.

Dr. Del Gallo based his opinions on a proper factual and medical history, and extensive physical examination findings. He explained that appellant's physical examination revealed that the accepted employment-related conditions had resolved, and that appellant's preexisting degenerative conditions were due to nonemployment-related factors. Dr. Del Gallo further explained that the left total knee replacement was not medically necessary due to the work-related

¹⁹ *Z.D.*, Docket No. 19-0662 (issued December 5, 2019); *see R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

²⁰ *See R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

²¹ *See P.T.*, Docket No. 21-0328 (issued May 2, 2022); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

²² *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

²³ *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

injury and that no further treatment was medically warranted. Thus, the Board finds that his opinion represents the weight of the medical evidence with regard to the termination of appellant's wage-loss compensation and medical benefits.²⁴ Accordingly, OWCP properly relied on Dr. Del Gallo's opinion in terminating appellant's wage-loss compensation and medical benefits.

CONCLUSION

The Board finds the case not in posture for decision with regard to whether appellant has met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award. The Board further finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 14, 2023, as she no longer had disability or residuals causally related to her accepted August 9, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 1, 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. The March 14, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 29, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁴ *J.T.*, Docket No. 20-1470 (issued October 8, 2021); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *see also A.F.*, Docket No. 16-0393 (issued June 24, 2016).