

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

M.M., Appellant	)	
	)	
and	)	Docket No. 24-0347
	)	Issued: May 21, 2024
U.S. POSTAL SERVICE, UNIVERSITY	)	
STATION POST OFFICE, Dallas, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On February 19, 2024 appellant filed a timely appeal from a December 19, 2023 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 18 percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

**FACTUAL HISTORY**

On August 23, 2008 appellant, then a 34-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a left knee injury when his knee popped

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

while lifting and placing a box into a gondola while in the performance of duty. OWCP accepted the claim for lateral collateral ligament knee sprain, left knee loose body, and left chondromalacia patellae. Appellant underwent OWCP-authorized surgery, which was performed on January 5, 2009. OWCP paid him wage-loss compensation on the supplemental and periodic rolls commencing February 9, 2009. Appellant returned to full-time light-duty work on March 16, 2009.

On December 5, 2013 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated November 20, 2014, OWCP granted appellant a schedule award for 18 percent permanent impairment of the left lower extremity.<sup>2</sup> The award ran for 51.84 weeks from July 15, 2010 through July 12, 2011.

In a report dated May 19, 2017, Dr. Robert A. Helsten, a physical medicine and rehabilitation specialist, noted the history of appellant's August 23, 2008 employment injury and left knee surgery in 2008. He also reported appellant's physical examination findings, including normal range of motion (ROM) testing of the left knee. Diagnoses included left knee lateral collateral ligament sprain and left knee chondromalacia patellae. Dr. Helsten determined that appellant had reached maximum medical improvement (MMI) on May 19, 2017. Under the diagnosis-based impairment (DBI) methodology of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>3</sup> he determined that appellant had two percent permanent impairment of his left lower extremity. Dr. Helsten found that a class of diagnosis (CDX) for the accepted knee strain under Table 16-3, page 509 was a Class 1 impairment with a default grade C, or two percent impairment. He assigned a grade modifier for functional history (GMFH) of 1; a grade modifier for physical examination (GMPE) of 1; and a grade modifier for clinical studies (GMCS) of 0. Dr. Helsten applied the net adjustment formula which resulted in a Class 1, grade C, or two percent permanent impairment of the left lower extremity.

On August 1, 2017 appellant filed a Form CA-7 claim for an increased schedule award.

On November 14, 2017 OWCP referred the case record and a statement of accepted facts (SOAF) to Dr. Morley Slutsky, a physician Board-certified in occupational medicine, serving as an OWCP DMA.

In a December 2, 2017 report, Dr. Slutsky noted his review of the SOAF and medical record, including Dr. Helsten's May 19, 2017 report. Utilizing Table 16-3, page 511 of the A.M.A., *Guides*, he found a CDX for primary knee joint arthritis with full-thickness medial femoral condyle articular cartilage defect, resulted in a Class 1, grade C or seven percent impairment. Dr. Slutsky assigned a GMFH of 2; a GMPE of 2; and a GMCS of 2. He applied the

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<sup>2</sup> The decision notes that the award was for 18 percent permanent impairment of the "left upper extremity"; however, this appears to be a typographical error as the decision explains that was based on impairment ratings provided by Dr. R. Craig Sanders, a treating Board-certified orthopedic surgeon, and Dr. Ronald Blum, an orthopedic surgeon serving as a district medical adviser (DMA), for permanent impairment of the left lower extremity.

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

net adjustment formula  $(GMFH - CDX) (2-1) + (GMPE - CDX) (2-1) + (GMCS - CDX) (2-1) = +2$  net adjustment, which resulted in a Class 1, grade E or nine percent permanent impairment of the left lower extremity. Under the ROM impairment methodology, Dr. Slutsky determined that appellant had zero percent impairment of the left lower extremity due to full ROM of the left knee.

By decision dated December 11, 2017, OWCP denied modification of its November 20, 2014 decision.

In an October 24, 2019 permanent impairment rating, Dr. Ronnie Shade, an orthopedic surgeon, recounted appellant's accepted diagnoses of left knee chondromalacia patellae, left knee lateral collateral ligament sprain, and left knee loose body. He reported appellant's physical examination findings, including normal left knee ROM. Dr. Shade determined that appellant had reached MMI on October 24, 2019. Under the DBI methodology of the sixth edition of the A.M.A., *Guides*, he also rated appellant's permanent impairment for left knee strain under Table 16-3, page 509 of the A.M.A., *Guides*. Dr. Shade determined that appellant had two percent permanent impairment of the left lower extremity. He found that the CDX was 1. Dr. Shade assigned a GMFH of 1; a GMPE of 1; and a GMCS of 2. He applied the net adjustment formula  $(GMFH - CDX) (1-1) + (GMPE - CDX) (1-1) + (GMCS - CDX) (2-1) = +1$  net adjustment, which resulted in a CDX 1 impairment, grade D or two percent permanent impairment of the left lower extremity.

On June 10, 2020 appellant filed a Form CA-7 claim for an increased schedule award.

On June 18, 2020 OWCP again referred the case record and a SOAF to Dr. Slutsky.

In a June 25, 2020 report, Dr. Slutsky noted his review of the SOAF and medical record, including Dr. Shade's October 24, 2019 report. Utilizing Table 16-3, page 511 of the A.M.A., *Guides*, he found a CDX for primary knee joint arthritis with full-thickness medial femoral condyle articular cartilage defect, was a Class 1 grade C or seven percent impairment. Dr. Slutsky noted that appellant's symptoms and physical examination had improved. He assigned a GMFH of 1; a GMPE of 0; and a GMCS of 2. Dr. Slutsky applied the net adjustment formula  $(GMFH - CDX) (1-1) + (GMPE - CDX) (0-1) + (GMCS - CDX) (2-1) = 0$  net adjustment, which resulted in a Class 1 impairment, grade C or seven percent permanent impairment of the left lower extremity. Under the ROM impairment methodology, he determined that appellant had zero percent impairment of the left lower extremity due to full ROM of the left knee.

By decision dated July 8, 2020, OWCP denied modification of its November 20, 2014 decision.

In a September 18, 2023 report, Dr. Greg Gardner, an osteopath Board-certified in family medicine, noted appellant's accepted diagnoses. He reported appellant's physical examination findings, including decreased left knee ROM. Dr. Gardner observed decreased ROM of the left knee, recorded ROM three times, and obtained the following results in degrees: flexion of 90, 90, and 90/110+ and extension of -15, -15, and -15/0. He determined that appellant had reached MMI on September 18, 2023. Referring to the sixth edition of the A.M.A., *Guides* Table 16-23 and Table 16-25, Dr. Gardner rated appellant using the ROM method with a left lower extremity impairment of 30 percent, noting a functional history difficulty of zero. Utilizing the DBI

methodology of the sixth edition of the A.M.A., *Guides*, he found the CDX was for primary knee arthritis with a three-millimeter cartilage interval using Table 16-3 for full-thickness articular cartilage defect was a Class 1 impairment. Dr. Gardner assigned a GMFH of 1; a GMPE of 1; and a GMCS of 2. He applied the net adjustment formula  $(GMFH - CDX) (1-1) + (GMPE - CDX) (1-1) + (GMCS - CDX) (2-1) = +1$  net adjustment, which resulted in a CDX 1 impairment, grade D or eight percent permanent impairment of the left lower extremity. Dr. Gardner concluded that appellant's permanent impairment rating of the left lower extremity was 30 percent.

On October 16, 2023 appellant filed a Form CA-7 claim for an increased schedule award.

On November 30, 2023 OWCP referred the case record and a SOAF to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as an OWCP DMA.

In a December 12, 2023 report, Dr. Hammel noted his review of the SOAF and medical record, including Dr. Gardner's September 18, 2023 report. Utilizing Table 16-3, page 511 of the A.M.A., *Guides*, he found a CDX for left knee arthritis with full-thickness cartilage injury was a Class 1 grade C impairment. Dr. Hammel assigned a GMFH of 1; a GMPE of 2; and noted that GMCS was not applicable as it was used to determine the class. He applied the net adjustment formula  $(GMFH - CDX) (1-1) + (GMPE - CDX) (2-1) = 1$  net adjustment, which resulted in a Class 1 impairment, grade D or eight percent permanent impairment of the left lower extremity. Dr. Hammel found no permissible ROM permanent impairment. He explained that lower extremity stand-alone ROM based impairment under the A.M.A., *Guides* was not the preferred method in the absence of extenuating circumstances. Dr. Hammel stated that Dr. Gardner provided no discussion of extenuating circumstances to explain his use of stand-alone ROM.

By decision dated December 19, 2023, OWCP denied modification of its November 20, 2014 decision.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>4</sup> and its implementing regulations<sup>5</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>6</sup> As of May 1, 2009, schedule awards are determined in

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.* See also *D.H.*, Docket No. 23-1148 issued January 22, 2024); *Ronald R. Kraynak*, 53 ECAB 130 (2001).

accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>7</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>8</sup>

The sixth edition of the A.M.A., *Guides* provides 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>9</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>10</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>11</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>12</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>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 18 percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

Following appellant's schedule award on November 20, 2014 for 18 percent permanent impairment of the left lower extremity, appellant continued to submit medical evidence and he continued to request an additional schedule award. However, none of the additional medical evidence substantiated an increased permanent impairment rating. In reports dated May 19, 2017 and October 24, 2019, appellant's treating physicians, Dr. Helsten, and Dr. Shade reported that

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<sup>7</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>8</sup> *D.H.*, *supra* note 6; *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>9</sup> A.M.A., *Guides*, page 3, section 1.3.

<sup>10</sup> See *id.* at 509-11.

<sup>11</sup> *Id.* at 494-531.

<sup>12</sup> *Id.* at 23-28.

<sup>13</sup> See *supra* note 7 at Chapter 2.808.6(f) (March 2017). See also *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

appellant had two percent permanent impairment of the left lower extremity for the diagnosis of left knee strain. On December 2, 2017 DMA Slutsky reviewed the record and found that appellant had nine percent permanent impairment, based on the diagnosis of primary knee arthritis with full-thickness medial femoral condyle cartilage defect. In a June 25, 2020 report, he again reviewed the case record and noted that appellant's left knee condition had improved. Dr. Slutsky concluded that appellant had seven percent permanent impairment of the left lower extremity, based on his left knee arthritis.

In a September 18, 2023 report, Dr. Gardner, a treating physician, utilized the DBI methodology of the sixth edition of the A.M.A., *Guides*, and found the CDX for primary knee arthritis with a three-millimeter cartilage interval using Table 16-3 was a Class 1 impairment. He assigned a GMFH of 1; a GMPE of 1; and a GMCS of 2. Dr. Gardner applied the net adjustment formula  $(GMFH - CDX) (1-1) + (GMPE - CDX) (1-1) + (GMCS - CDX) (2-1) = +1$  net adjustment, which resulted in a Class 1 impairment, grade D or eight percent permanent impairment of the left lower extremity. He also utilized the ROM rating method and determined that, under Table 16-23 and Table 16-25, appellant had a total of 30 percent permanent impairment of the left lower extremity due to loss of flexion and extension of the left knee.

In a December 12, 2023 report, Dr. Hammel, the DMA, reviewed Dr. Gardner's impairment rating and concurred with his finding that appellant had an eight percent permanent impairment of the left lower extremity using the DBI methodology. He determined that under Table 16-3 (Knee Regional Grid), for the diagnosis of left knee arthritis with full-thickness cartilage injury, appellant had a CDX 1 impairment with a default value of seven percent. Dr. Hammel assigned a GMFH of 1, a GMPE of 2, and GMCS was not applicable and calculated that the net adjustment formula resulted in +1, which resulted in an eight percent permanent impairment of the lower extremity. Regarding the ROM permanent impairment rating provided by Dr. Gardner, the DMA explained that the ROM method could not be used to rate impairment in the absence of extenuating circumstances and there was no discussion of extenuating circumstances. The Board has reviewed the Dr. Hammel's rating, and finds that he properly applied the appropriate tables and grading schedules to the findings from Dr. Gardner's report, pursuant to the A.M.A., *Guides*.<sup>14</sup> OWCP, therefore, properly relied on Dr. Hammel, as he provided a well-rationalized report and opinion on appellant's right lower extremity permanent impairment, which was derived in accordance with the standards of the sixth edition of the A.M.A., *Guides*.<sup>15</sup>

As the medical evidence of record is insufficient to establish greater than 18 percent permanent impairment of the left lower extremity, the Board finds that appellant has not met his burden of proof.

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<sup>14</sup> *P.D.*, Docket No. 23-0004 (issued December 14, 2023); *A.S.*, Docket No. 22-0930 (issued January 19, 2023); *see also R.S.*, Docket No. 21-0833 (issued January 25, 2022).

<sup>15</sup> *P.D.*, *id.*; *C.J.*, Docket No. 22-0261 (issued May 17, 2023).

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 18 percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 19, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 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