United States Department of Labor
Employees' Compensation Appeals Board

J.T., Appellant	)	
and	)	**Docket No. 22-0991**
	)	**Issued: November 18, 2024**
U.S. POSTAL SERVICE, AKRON FIVE POINTS POST OFFICE, Akron, OH, Employer	)	

Appearances:
Alan J. Shapiro, for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 15, 2022 appellant, through counsel, filed a timely appeal from a June 1, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On February 10, 2014 appellant, then a 56-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 8, 2014 he was attacked by a customer and sustained injuries to both shoulders, knees, and a hip while in the performance of duty. He stopped work on February 8, 2014 and returned on February 12, 2014.[3] OWCP accepted appellant's claim for bilateral sprains of the shoulders and upper arms, bilateral contusions of the knees, and bilateral abrasions or friction burns of leg, except foot, without infection.

In an April 19, 2017 report, Dr. Catherine Watkins Campbell, a family medicine specialist, referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[4] and opined that appellant had one percent permanent impairment of the left lower extremity. She used the diagnosis of bursitis, noted appellant's history of contusion or other soft tissue lesion of the knee, and explained that under Table 16-3, page 509, Knee Regional Grid, application of the net adjustment formula resulted in a rating of one percent permanent impairment of the left lower extremity.

On January 22, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated January 30, 2020, OWCP expanded the acceptance of the claim to include the additional condition of aggravation of left knee arthritis.

On January 30, 2020 OWCP forwarded Dr. Watkins Campbell's report, the medical record, and a statement of accepted facts (SOAF) to Dr. Jovito B. Estaris, a physician Board-certified in occupational medicine and serving as an OWCP district medical adviser (DMA) for review regarding appellant's entitlement to a schedule award.

In a February 19, 2020 report, Dr. Estaris reviewed the SOAF and medical record, referred to the sixth edition of the A.M.A., *Guides*, and utilized the diagnosis-based impairment (DBI) methodology to rate appellant's permanent impairment. For the left lower extremity, the DMA referred to the Knee Regional Grid, Table 16-3, page 509, using the class of diagnosis (CDX) of contusion of the left knee with bursitis and consistent palpable findings, placed appellant in class 1 C with a default value of 1 percent permanent impairment. Dr. Estaris then applied the grade modifiers. For the grade modifier for functional history (GMFH), he referred to Table 16-6, page 516, Functional History Adjustment, Lower Extremities, and found that appellant had a GMFH of 1 for antalgic gait. For the grade modifier for physical examination (GMPE), the DMA referred

[3] Appellant retired from the employing establishment in April 2019.

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

to Table 16-7, page 517, Physical Examination Adjustment, Lower Extremities, and found that appellant had a GMPE of 1 for a tender left knee with crepitance and mild motion deficits. He noted that the grade modifier for clinical studies (GMCS) was not used as it was "not reliable per impairment rater." Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), Dr. Estaris calculated that (1-1) + (1-1) = 0 net adjustment to the CDX default value, resulting in 1 percent permanent impairment of the left lower extremity using the DBI method. He also applied the range of motion (ROM) method and explained that the ROM of both knees was symmetrical and therefore appellant had 0 percent impairment according to the ROM method. Dr. Estaris concluded that the DBI method resulted in the higher rating of 1 percent permanent impairment of the left lower extremity. He advised that maximum medical improvement (MMI) was reached on April 19, 2017 the date of Dr. Watkins Campbell's examination.

By decision April 2, 2020, OWCP granted appellant a schedule award for one percent permanent impairment of the left lower extremity. The award ran for 20.16 weeks from April 19 through May 9, 2017. OWCP noted that the schedule award was based on the January 23, 2017 report of Dr. Watkins Campbell, appellant's treating physician, and the February 19, 2020 report of Dr. Estaris, the DMA.

In a permanent impairment evaluation dated May 12, 2020, Dr. Sami E. Moufawad, a Board-certified physiatrist, discussed appellant's February 8, 2014 employment injury and referred to the A.M.A., *Guides*. He noted that he rated appellant's left knee arthritis according to the A.M.A., *Guides*. Dr. Moufawad explained that he obtained an x-ray which revealed that the left knee medial compartment measured 2.3 millimeters (mm), the lateral compartment was 2.6 mm, and the patellofemoral compartment was 2.2 mm. He noted that appellant reached MMI on April 19, 2017. Dr. Moufawad utilized the DBI method, referred to the Knee Regional Grid, Table 16-3, page 511, and determined that the diagnostic key factor of primary knee joint osteoarthritis with 2.3 mm thickness of the medial compartment placed appellant in a CDX of 1 C with a default value of 7 percent impairment. For the grade modifiers, he referred to Table 16-6, page 516, Functional History Adjustment, Lower Extremities and found that appellant had a GMFH of 1 due to a limp; under Table 16-7, page 517, Physical Examination Adjustment, Lower Extremities appellant had a GMPE of 1 due to limited ROM and palpatory findings of osteophytes; a GMCS, Table 16-8, page 519, was not applicable because the clinical studies were used to determine the CDX. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), Dr. Moufawad calculated that (1-1) + (1-1) + (NA) resulted in a net grade modifier of 0 and a final rating of a seven percent permanent impairment of the left lower extremity.

On August 13, 2020 appellant filed a Form CA-7 claim for an increased schedule award.

On August 20, 2020 OWCP forwarded Dr. Moufawad's report, the medical record, and an updated SOAF to Dr. Estaris, the DMA, for review.

In a September 14, 2020 report, Dr. Estaris explained that there were inconsistencies between the examination findings in the reports of Dr. Moufawad and Dr. Watkins Campbell. He noted that Dr. Moufawad based his findings on an x-ray of the left knee, which showed narrowing of the joint spaces; however, there was no x-ray of the right knee for comparison. Dr. Estaris explained that x-rays of both knees were needed to determine if the findings of narrowed joint

spaces of the left knee was the result of an injury, or of the normal aging process. He recommended an independent medical examination from a Board-certified orthopedic surgeon.

On September 21, 2020 OWCP referred appellant, along with a SOAF and a series of questions, for a second opinion examination with Dr. William R. Bohl, a Board-certified orthopedic surgeon.

In a November 24, 2020 report, Dr. Bohl noted that the only ratable diagnosis for the left knee was aggravation of the osteoarthritis. He explained that "There was preexisting osteoarthritis of some degree in both knees, which has progressed at what is probably its expected rate. Since under FECA there is no apportionment, so the presence of a preexisting osteoarthritis does not change the impairment rating. Given this scenario it is not necessary to know either the degree of arthritis in the opposite knee or the degree of arthritis in the allowed knee prior to the work injury as long as this diagnosis remains allowed." Using the DBI method, Dr. Bohl calculated 16 percent left lower extremity permanent impairment based on the diagnosis of primary knee joint arthritis. He noted that the impairment rating under the ROM method was 0 percent.

On December 15, 2020 OWCP forwarded Dr. Bohl's report, the medical record, and a SOAF to Dr. Estaris, the DMA.

In a January 4, 2021 report, Dr. Estaris requested that Dr. Bohl obtain x-rays of both knees with measurements of the knee joint spaces for comparison.

In a January 28, 2020 memorandum, OWCP was notified that Dr. Bohl no longer was available to perform an impairment rating.

On March 25, 2021 OWCP referred appellant, along with a SOAF and a series of questions, for a second opinion examination with Dr. Michael J. Jurenovich, a Board-certified orthopedic surgeon.

In an April 7, 2021 report, Dr. Jurenovich noted appellant's history of injury and treatment. In response to the question, "Do residuals remain of aggravation of left knee arthritis as causally related to the work injury on February 8, 2014?" he answered, "No [h]e has ongoing arthritis, but has no discovery from that. He takes no arthritis or pain medication…. The x-ray findings of 3mm is equal to the non-injured right knee." Dr. Jurenovich utilized Table 16-3, page 511 of the A.M.A., *Guides*, for the CDX of left knee joint arthritis, with findings of 3mm cartilage interval. He placed appellant in Class 1, with a default rating of seven percent. Dr. Jurenovich then applied a GMFH of 0, GMPE of 0, and a GMCS of 0 in the net adjustment formula and concluded that appellant had five percent permanent impairment of the left lower extremity. However, he further opined that, since appellant's x-ray findings of both knees were symmetrical, and based on no residual symptomatology, the rating should be apportioned to 0 percent for appellant's left knee arthritis. Dr. Jurenovich determined that appellant did not have a permanent impairment of the lower extremities related to his work injury on February 8, 2014 as appellant's original conditions of knee contusion and abrasion bilaterally had resolved. He therefore concluded that appellant had no more than the previously awarded one percent permanent impairment of the left lower extremity.

On April 23, 2021 OWCP forwarded Dr. Jurenovich's report and the medical record to Dr. Estaris, the DMA.

In an April 29, 2021 report, Dr. Estaris reiterated his opinion that appellant had one percent permanent impairment of the left lower extremity.

In a May 5, 2021 decision, OWCP denied appellant's claim for an increased schedule award.

On May 13, 2021 appellant, through counsel, timely requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on August 24, 2021.

By decision dated October 29, 2021, OWCP's hearing representative vacated the May 5, 2021 decision, finding that the second opinion physician report from Dr. Jurenovich required clarification.

On November 3, 2021 OWCP requested clarification from Dr. Jurenovich. It noted that his report stated that appellant had no residuals from the accepted condition of aggravation of arthritis of the left knee, however, he then computed an impairment rating based on arthritis of the left knee. OWCP explained that if appellant had no residuals of his accepted conditions, then there would be no ratable impairment causally related to the employment injury.

In a November 14, 2021 addendum, Dr. Jurenovich explained that, "the only residual that remains of [appellant's] aggravation of left knee arthritis as related to the assault on February 8, 2014, is a limp, or antalgic gait, as indicated by the noted objective findings in Dr. Estaris' report." He opined, "After reading Dr. Estaris' report in detail, I understand his logic and I agree with his findings as described, in which he noted the objective finding of an antalgic gait and his inclusion of the previously awarded 1 percent in the current impairment rating, thus, no additional award incurred for this claim."

By decision dated November 18, 2021, OWCP denied appellant's claim for an increased schedule award.

On November 24, 2021 appellant, through counsel, timely requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on March 18, 2022.

By decision dated June 1, 2022, OWCP's hearing representative affirmed the November 18, 2021 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA[5] and its implementing 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 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.[7] As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.[8]

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 position of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.[9] After 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).[10] Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnosis 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 through an OWCP medical adviser for an opinion concerning the nature and extent of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.[12]

ANALYSIS

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

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[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id.* *See also M.F.*, Docket Nos. 21-0759 & 21-1037 (issued May 4, 2022); *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[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.* Chapter 3.700, Exhibit 1 (January 2010).

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

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

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

[12] *Supra* note 8 at Chapter 2.808.6f (March 2017).

On March 25, 2021 OWCP referred appellant, along with a SOAF and a series of questions, for a second opinion examination with Dr. Jurenovich. In an April 7, 2021 report, Dr. Jurenovich noted appellant's history of injury and treatment. In response to the question, "Do residuals remain of aggravation of left knee arthritis as causally related to the work injury on February 8, 2014?" he answered, "No [h]e has ongoing arthritis, but has no discovery from that. [Appellant] takes no arthritis or pain medication…. The x-ray findings of 3 mm is equal to the non-injured right knee." Dr. Jurenovich utilized Table 16-3, page 511 of the A.M.A., *Guides*, for the CDX of left knee joint arthritis, with findings of 3mm cartilage interval. He placed appellant in Class 1, with a default rating of seven percent. Dr. Jurenovich then applied a GMFH of 0, GMPE of 0, and a GMCS of 0 in the net adjustment formula and concluded that appellant had five percent permanent impairment of the left lower extremity. However, he further opined that, since appellant's x-ray findings of both knees were symmetrical, and based on no residual symptomatology, the rating should be apportioned to 0 percent for appellant's left knee arthritis. Dr. Jurenovich determined that appellant did not have permanent impairment of the lower extremities related to his February 8, 2014 work injury as appellant's original conditions of knee contusion and abrasion bilaterally had resolved. He, therefore, concluded that appellant had no greater than the one percent permanent impairment of the left lower extremity previously awarded.

On November 3, 2021 OWCP requested clarification from Dr. Jurenovich. In a November 14, 2021 addendum, Dr. Jurenovich explained that, "the only residual that remains of [appellant's] aggravation of left knee arthritis as related to the assault on February 8, 2014, is a limp, or antalgic gait, as indicated by the noted objective findings in Dr. Estaris' report." He opined, "After reading Dr. Estaris' report in detail, I understand his logic and I agree with his findings as described, in which he noted the objective finding of an antalgic gait and his inclusion of the previously awarded 1 percent in the current impairment rating, thus, no additional award incurred for this claim."

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[13] It has an obligation to see that justice is done.[14] As it undertook development of the evidence by referring appellant to Dr. Jurenovich, it had the duty to secure a sufficiently-rationalized report based on an accurate factual and medical background.[15] The Board finds that Dr. Jurenovich has not provided sufficient rationale for his conclusory opinion that appellant has no more than one percent permanent impairment of the left lower extremity.

Accordingly, this case shall be remanded to OWCP for further development of the medical evidence. On remand OWCP shall refer appellant to a new second opinion physician in the

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[13] *See M.G.,* Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.,* 37 ECAB 200, 204 (1985); *Michael Gallo,* 29 ECAB 159, 161 (1978); *William N. Saathoff,* 8 ECAB 769, 770-71; *Dorothy L. Sidwell,* 36 ECAB 699, 707 (1985).

[14] *See A.J.,* Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell,* 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans,* 26 ECAB 195 (1974).

[15] *See G.T.,* Docket No. 21-0170 (issued September 29, 2021); *A.P.,* Docket No. 17-0813 (issued January 3, 2018); *Richard F. Williams,* 55 ECAB 343, 346 (2004).

appropriate field of medicine for a rationalized opinion on whether appellant has greater than the one percent permanent impairment of the left lower extremity previously awarded.[16] After 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.

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2022 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: November 18, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[16] *J.F.,* Docket No. 23-0963 (issued December 8, 2023); *S.G.,* Docket No. 22-0014 (issued November 3, 2022); *G.T., id.; see also D.L.,* Docket No. 20-0886 (issued November 9, 2021).