United States Department of Labor
Employees' Compensation Appeals Board

A.P., Appellant	)	
and	)	**Docket No. 24-0818**
U.S. POSTAL SERVICE, BRENTWOOD PROCESSING & DISTRIBUTION CENTER, Washington, DC, Employer	)	**Issued: October 22, 2024**

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 7, 2024 appellant filed a timely appeal from a July 22, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 her burden of proof to establish greater than seven percent permanent impairment of her right lower extremity, for which she previously received a schedule award.

FACTUAL HISTORY

On January 28, 2005 appellant, then a 38-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained a swollen right knee due to factors of her

[1] 5 U.S.C. § 8101 *et seq.*

federal employment including standing to dispatch mail. She noted that she first became aware of her condition and its relationship to her federal employment on January 25, 2005. OWCP accepted the claim for right knee tendinitis, synovitis, tenosynovitis, and tear of the lateral meniscus of the right knee.

On March 17, 2008 appellant underwent OWCP-authorized right knee arthroscopic partial lateral meniscectomy. OWCP paid her wage-loss compensation on its supplemental rolls commencing March 13, 2008. Appellant returned to full-time limited-duty work on June 14, 2008. She stopped work again on September 30, 2010. OWCP paid appellant wage-loss compensation on its supplemental rolls commencing September 30, 2010, and on the periodic rolls commencing July 29, 2012.

In a December 8, 2021 report, Dr. Nigel M. Azer, an attending Board-certified orthopedic surgeon, examined appellant and reviewed a right knee x-ray performed on that date. He provided impressions of symptomatic tear of the lateral meniscus and post-traumatic arthritis of the right knee. Dr. Azer applied the diagnosis-based impairment (DBI) rating method of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[2] and found that, under Table 16-3, pages 509-11, for the class of diagnosis (CDX) of right knee partial medial and lateral meniscectomy appellant had a Class 1 impairment which represented 13 percent permanent impairment of the right knee. He further found that x-ray findings suggestive of a three-millimeter (mm) cartilage interval with full-thickness articular cartilage defect of the right knee represented a Class 1 impairment with a grade E or nine percent permanent impairment of the right knee. Dr. Azer utilized the Combined Values Chart to determine that appellant sustained a total of 21 percent permanent impairment of the right lower extremity.

On March 15, 2022 OWCP referred appellant's case record and a statement of accepted facts (SOAF) to Dr. Herbert White, Jr., a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA). It specifically requested that Dr. White review Dr. Azer's December 8, 2021 report.

In his March 17, 2022 report, Dr. White indicated that he had reviewed Dr. Azer's December 8, 2021 report. He utilized the DBI rating methodology in the sixth edition of the A.M.A., *Guides* and found that under Table 16-3 (Knee Regional Grid), page 509, appellant sustained two percent permanent impairment of the right lower extremity for the OWCP-authorized partial right knee lateral meniscectomy. Dr. White found that under Table 16-3, page 511, she had seven percent permanent impairment of the right lower extremity for primary joint knee arthritis. However, he noted that his seven percent permanent impairment rating was not valid until he reviewed a right knee x-ray referenced in Dr. Azer's report as it was not contained in the case record. Dr. White explained the discrepancies between his 2 percent right knee permanent impairment rating and Dr. Azer's 13 percent right knee permanent impairment rating. He concluded that the tentative right lower extremity permanent impairment rating was seven percent. Dr. White explained that page 499 of the A.M.A., *Guides* provides that when there is more than one diagnosis, the one that provides the most clinically accurate impairment rating should be used; this will generally be the more specific diagnosis. He noted that the knee

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

osteoarthritis provided the most clinically accurate causally related impairment and was the only diagnosis that should be rated. Dr. White determined that appellant had reached maximum medical improvement (MMI) on December 8, 2021, the date of Dr. Azer's permanent impairment evaluation.

OWCP received August 24, 2020 and December 8, 2021 right knee x-ray reports read by Dr. Azer. Dr. Azer noted that the August 24, 2020 right knee x-ray showed good preservation of the joint space with some very mild lateral compartment gonarthrosis. He noted that the December 8, 2021 right knee x-ray revealed some medial joint space narrowing, and that the medial joint line measured 3 mm.

In subsequent reports dated April 18 and November 29, 2022, Dr. White reviewed Dr. Azer's August 24, 2020, and December 8, 2021 right knee x-ray reports, and an unsigned right knee x-ray report dated September 26, 2022. He reiterated his prior calculations and comments from his March 17, 2022 report. Dr. White found that appellant had a DBI permanent impairment rating of two percent for the right lower extremity based on her OWCP-authorized partial right knee lateral meniscectomy and a permanent impairment rating of seven percent permanent impairment of the right lower extremity based on her primary right joint knee arthritis. He again referred to page 499 of the A.M.A., *Guides* and concluded that appellant had seven percent right lower extremity permanent impairment. Dr. White also again determined that she had reached MMI on December 8, 2021.

By decision dated March 1, 2023, OWCP granted appellant a schedule award for seven percent permanent impairment of the right lower extremity, based on the opinion of the DMA, Dr. White. The award ran for 20.16 weeks for the period December 8, 2021 through April 28, 2022.[3]

On March 23, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated August 31, 2023, OWCP's hearing representative set aside the March 1, 2023 decision, finding that the seven percent right lower extremity schedule award was based on range of motion (ROM) calculations while neither Dr. Azer, appellant's attending physician, nor Dr. White, OWCP's DMA, provided three independent measurements for all planes of motion as required by the sixth edition of the A.M.A., *Guides*. On remand the hearing representative directed OWCP to prepare a new SOAF and refer appellant for a second opinion impairment evaluation to determine the extent of permanent impairment to her right lower extremity in accordance with the sixth edition of the A.M.A., *Guides*. Following any further development deemed necessary, OWCP was to issue a *de novo* decision.

OWCP subsequently referred appellant, along with an updated SOAF, the medical record, and a series of questions, to Dr. Randy F. Davis, a Board-certified orthopedic surgeon, for a second opinion evaluation.

[3] An automated compensation payment system worksheet dated February 28, 2023 indicated that OWCP paid appellant schedule award compensation in the amount of $19,340.67 for the period December 8, 2021 through April 28, 2022.

In an October 17, 2023 report, Dr. Davis discussed appellant's factual and medical history, and reviewed the SOAF and the medical record. He reported his findings on physical examination, including normal ROM of the right knee. Dr. Davis opined that appellant had reached MMI on the date of his impairment evaluation. He referred to the sixth edition of the A.M.A., *Guides* and utilized the DBI rating methodology to find that, under Table 16-3, page 509, the CDX for a partial lateral meniscectomy was a Class 1 impairment with a default value of two percent. Dr. Davis advised that a grade modifier for clinical studies (GMCS) was excluded from the adjustment calculation, since he did not have the opportunity to review an independent medical evaluation for joint space narrowing. He applied the net adjustment formula and concluded that appellant had two percent permanent impairment of the right lower extremity. Dr. Davis noted that he did not utilize the ROM rating method since appellant had normal ROM. He concluded that she had a final right lower extremity permanent impairment of two percent.

On October 27, 2023 OWCP requested that Dr. Davis clarify his right lower extremity impairment rating as he failed to perform x-rays of appellant's right knee and to address her previous schedule award for seven percent permanent impairment of the right lower extremity.

A February 6, 2024 right knee x-ray report read by Dr. Mukul Das, a Board-certified diagnostic radiologist, revealed minimal osteoarthrosis in the tibiofemoral joint compartments.

In a February 13, 2024 supplemental report, Dr. Davis noted appellant's prior schedule award for seven percent permanent impairment of the right lower extremity and his own prior two percent right lower extremity permanent impairment rating. He reviewed the February 6, 2024 right knee x-ray and noted that it showed minimal osteoarthrosis in the tibial femoral joint compartments but, indicated that there were tiny marginal osteophytes medial and lateral without narrowing of the joint space. Dr. Davis, thus, disagreed with any determination of narrowing of the cartilage interval. He noted that prior impairment ratings did not affect his ability to provide a rating in accordance with the sixth edition of the A.M.A., *Guides*. Dr. Davis, therefore, concluded that his prior two percent right lower extremity permanent impairment rating remained unchanged.

On February 22, 2024 OWCP routed Dr. Davis' October 17, 2023 and February 13, 2024 reports, Dr. Das' February 6, 2024 x-ray report, a SOAF, and the case file, to Dr. White as the DMA for OWCP. It requested that he provide an evaluation of appellant's permanent impairment under the sixth edition of the A.M.A., *Guides* and date of MMI.

In a March 2, 2024 report, Dr. White utilized the DBI rating method to find that, under Table 16-3, page 509, the CDX for appellant's accepted right knee partial lateral meniscectomy, fell under a Class 1 impairment with a default value of two percent. He assigned a grade modifier for functional history (GMFH) of 1 based on antalgic gait under Table 16-6, page 516, and a grade modifier for physical examination (GMPE) of 1 based on tenderness under Table 16-7, page 517. Dr. White excluded GMCS from the formula finding that it was used for diagnostic placement under Table 16-8, page 519. He utilized the net adjustment formula, which resulted in a grade C or two percent permanent impairment of the right lower extremity. Dr. White reviewed x-rays of appellant's right knee dated January 25, 2005, August 24, 2020, September 26, 2022, and February 6, 2024. He concluded that appellant's right knee x-ray dated February 6, 2024 revealed no narrowing of the joint space. Dr. White also noted that the ROM

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

By decision dated March 7, 2024, OWCP denied appellant's claim for an increased schedule award.

On March 21, 2024 appellant requested reconsideration and submitted a March 18, 2024 right knee magnetic resonance imaging (MRI) scan from Dr. Shane Keogh, a Board-certified diagnostic radiologist.

In the March 18, 2024 right knee MRI scan report, Dr. Keogh provided impressions of free edge and undersurface irregularity of the lateral meniscal body probably related to postsurgical change with intrasubstance cystic change along the anterior horn and anterior root insertion, no evidence of displaced lateral meniscal tear, and mild lateral compartment chondromalacia; medial meniscus intact; mild patellofemoral chondromalacia; asymmetric soft tissue edema along superolateral margin of Hoffa's fat pad may be seen in the setting of soft tissue impingement secondary to abnormal patellar tracking; and small joint effusion and popliteal cyst.

On March 26, 2024 OWCP requested that Dr. White, the DMA, review Dr. Keogh's March 18, 2024 MRI scan report and provide an impairment rating in accordance with the sixth edition of the A.M.A., *Guides* and appellant's date of MMI.

In an April 1, 2024 report, Dr. White reviewed Dr. Keogh's March 18, 2024 MRI scan report. He restated his prior calculations from his March 17, April 8, and November 29, 2022, and March 2, 2024 reports and found that appellant had a DBI permanent impairment rating of two percent for the right lower extremity based on her OWCP-authorized partial right knee lateral meniscectomy. Dr. White also applied the DBI rating method to appellant's right knee soft tissue lesion and determined, using Table 16-3, pages 509, the CDX for appellant's radiographic findings was a Class 1 impairment with a default value of one percent. He assigned GMFH of 1 based on antalgic gait under Table 16-6, page 516, and GMPE of 1 based on tenderness under Table 16-7, page 517. Dr. White excluded GMCS from the formula because it was used for diagnostic placement under Table 16-8, page 519. He applied the net adjustment formula, which resulted in a default grade C or one percent permanent impairment of the right lower extremity. Dr. White noted that the ROM rating method could not be used, referring to page 552 of the A.M.A., *Guides*, which stated that the ROM method was only to be used if no other approach was available for rating. He explained that he had reviewed the March 18, 2024 MRI scan of appellant's right knee. Dr. White noted that mild lateral compartment chondromalacia was seen, however the A.M.A., *Guides* did not have a DBI grid to rate chondromalacia. He explained that while this condition could potentially be rated using the arthritis grid, the *Guides*, at page 518, related that only plain x-ray films could be used to rate arthritis.

Dr. White concluded that, as the OWCP-authorized right knee partial lateral meniscectomy was the most clinically accurate causally related impairment and was the only diagnosis that should be rated in accordance with page 497 of the sixth edition of the A.M.A., *Guides*, appellant had two percent permanent impairment of the right lower extremity due to the OWCP-authorized surgery. He again determined that MMI was reached on December 8, 2021.

By decision dated April 25, 2024, OWCP denied modification, finding that the weight of the medical evidence rested with the opinions of Dr. Davis, OWCP's second opinion physician, as supported by the opinion of the DMA, Dr. White.

On June 4, 2024 appellant requested reconsideration and submitted an additional report dated May 20, 2024 from Dr. Azer.

In the May 20, 2024 report, Dr. Azer discussed his examination findings and reviewed diagnostic test results, including a new right knee MRI scan, which were suggestive of a lateral meniscus tear. He related that a new right knee x-ray was obtained that day which showed a 3-mm joint space on the medial compartment and impressions of lateral meniscus tear and post-traumatic chondromalacia/arthritis of the right knee. Dr. Azer noted his review of Dr. Davis' reports and disagreed with his two percent right lower extremity permanent impairment rating. He reiterated his prior finding that appellant had 21 percent permanent impairment of the right lower extremity. Dr. Azer explained that the presence of an effusion and a Baker's cyst on the MRI scan were both pathognomonic for IntraOp articular pathology of the right knee. He also noted that there may be a role for arthroscopic surgery to address appellant's lateral meniscus tear end-stage articular damage should her symptoms persist and should she want to proceed with further treatment.

By decision dated July 22, 2024, OWCP denied modification of the April 25, 2024 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA[4] and its implementing regulations[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. 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.[6] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (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]

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[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id. See also Ronald R. Kraynak,* 53 ECAB 130 (2001).

[7] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

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

Chapter 16 of the sixth edition of the A.M.A., *Guides*, pertaining to the lower extremities, provides that DBI is the primary method of calculation for the lower limb and that most impairments are based on the DBI where impairment class is determined by the diagnosis and specific criteria as adjusted by a GMFH, a GMPE, and/or a GMCS. 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 permanent impairment of 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 that table, after the diagnosis and the CDX is determined, a default grade value is identified, the net adjustment formula is then applied. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12]

The evidence required to support a schedule award includes medical evidence that shows the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of maximum medical improvement or MMI).[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 impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[14]

ANALYSIS

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

On March 1, 2023 OWCP granted appellant a schedule award for seven percent permanent impairment of the right lower extremity. It determined that the reports from DMA, Dr. White, dated April 18 and November 29, 2022, which found that appellant had a seven

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[9] A.M.A., *Guides* 497, section 16.2.

[10] *Id.* at 543; *see also 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] *Supra* note 7 at Chapter 2.808.6(b)(1) (March 2017).

[14] *Supra* note 7 at Chapter 2.808.6f. *See also R.J.,* Docket No. 23-0580 (issued April 15, 2024); *D.J.*, Docket No. 19-0352 (issued July 24, 2020); *J.T.,* Docket No. 17-1465 (issued September 25, 2019); *C.K.,* Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan,* 57 ECAB 349 (2006).

percent permanent impairment for the right lower extremity based on her primary right joint knee arthritis and that she had reached MMI on December 8, 2021, constituted the weight of the medical evidence. By decision dated August 31, 2023, an OWCP hearing representative set aside the March 1, 2023 decision. Following further development of the medical evidence, including referral to second opinion physician Dr. Davis, OWCP again referred the case record to Dr. White, the DMA, for further review. In a March 2, 2024 report, Dr. White reviewed x-rays of appellant's right knee dated January 25, 2005, August 24, 2020, September 26, 2022, and February 6, 2024. He concluded that appellant's right knee x-ray dated February 6, 2024 revealed no narrowing of the joint space. In an April 1, 2024 report, Dr. White concluded that as OWCP-authorized right knee partial lateral meniscectomy was the most clinically accurate causally related impairment and was the only diagnosis that should be rated in accordance with page 497 of the sixth edition of the A.M.A., *Guides*, appellant had two percent permanent impairment of the right lower extremity due to the OWCP-authorized surgery. He again determined that MMI was reached on December 8, 2021.

OWCP, by decision dated April 25, 2024, found that the weight of the medical evidence rested with the opinions of Dr. Davis, OWCP's second opinion physician, as supported by the opinion of the DMA, Dr. White. It found that appellant had a two percent permanent impairment of the right knee, based on the most clinically accurate diagnosis of partial lateral meniscectomy.

On June 4, 2024 appellant requested reconsideration and submitted a May 20, 2024 report, from Dr. Azer. Dr. Azer related that a new right knee x-ray was obtained that day which showed a 3-mm joint space on the medial compartment, impressions of lateral meniscus tear and post-traumatic chondromalacia/arthritis of the right knee. He noted his review of Dr. Davis' reports and disagreed with his two percent right lower extremity permanent impairment rating. Dr. Azer reiterated his prior finding that appellant had 21 percent permanent impairment of the right lower extremity. He also noted that there may be a role for arthroscopic surgery to address appellant's lateral meniscus tear end-stage articular damage should her symptoms persist and should she want to proceed with further treatment.

OWCP did not refer Dr. Azer's May 20, 2024 report to the DMA, Dr. White, for further review. By decision dated July 22, 2024, it denied modification of its April 25, 2024 decision.

As previously noted, 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.[15] The Board finds that another review of the record by the DMA is necessary as the March 1, 2023 schedule award, based on a finding of seven percent permanent impairment of the right lower extremity due to arthritic changes in appellants right knee, has been set aside. OWCP's subsequent decisions essentially found that appellant only had two percent permanent impairment of the right knee. However, Dr. Azer in his May 20, 2024 report related that a right knee x-ray obtained that day showed a 3-mm joint space of the medial compartment. The Board also notes that Dr. Azer in his May 20, 2024 report

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[15] *Supra* note 7 at Chapter 2.808.6f. *See also R.J.*, Docket No. 23-0580 (issued April 15, 2024); *D.J.*, Docket No. 19-0352 (issued July 24, 2020); *J.T.*, Docket No. 17-1465 (issued September 25, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010); *Frantz Ghassan*, 57 ECAB 349 (2006).

suggested that appellant may benefit from additional right knee surgery.[16] The DMA should therefore also review whether appellant has reached MMI.

The case shall therefore be remanded to OWCP for further review of the record by the DMA. 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 July 22, 2024 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 22, 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] *See D.R.*, Docket No. 09-1570 (issued March 4, 2010); *Clifford Irwin*, Docket No. 06-0602 (issued July 3, 2006).