

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

L.B., Appellant)	
)	
and)	Docket No. 24-0744
)	Issued: September 9, 2024
U.S. POSTAL SERVICE, MEADOW MESA)	
POST OFFICE, North Las Vegas, NV, 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 July 3, 2024 appellant filed a timely appeal from a January 5, 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.

ISSUE

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

FACTUAL HISTORY

On June 13, 2022 appellant, then a 67-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that she was injured on June 11, 2022 when she tripped on uneven pavement while in the performance of duty. She indicated that she sustained a swollen left knee

¹ 5 U.S.C. § 8101 *et seq.*

and face, including the chin. Appellant stopped work on June 11, 2022, and OWCP accepted her claim for “displaced transverse fracture of left patella, for closed fracture.” On June 25, 2022 she underwent OWCP-authorized open reduction of the left patellar fracture. Appellant returned to light-duty work on October 24, 2023, and full-duty work on November 24, 2023. OWCP paid her wage-loss compensation on the supplemental rolls, effective July 27, 2022, and on the periodic rolls, effective August 14, 2022.

On July 24, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On September 27, 2023 OWCP referred appellant, along with a copy of the case record and a statement of accepted facts (SOAF) to Dr. Brandon Snead, a Board-certified physiatrist, for a second opinion examination and evaluation. It requested that Dr. Snead provide an opinion on permanent impairment under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

In an October 23, 2023 report, Dr. Snead discussed appellant’s factual and medical history and reported the findings of his physical examination. He noted that appellant had no tenderness to palpation of the left knee, but exhibited pain and apprehension with passive flexion of the knee. Dr. Snead determined that appellant reached maximum medical improvement (MMI) as of October 23, 2023, the date of his examination. He diagnosed “displaced transverse fracture of the left patella.” However, when Dr. Snead utilized the diagnosis-based impairment (DBI) rating method under Table 16-3 (Knee Regional Grid), beginning on page 509, he based the class of diagnosis (CDX) on the diagnosis of “patellar fracture, non-displaced, with no significant objective abnormal findings at MMI.” He found that this diagnosis resulted in a Class 0 impairment. Dr. Snead assigned a grade modifier for functional history (GMFH) of 2 based on answers to a functional history questionnaire and a grade modifier for physical examination (GMPE) of 0 based on “no consistent findings.” He noted that the clinical studies were used to establish the diagnosis and indicated that the “initial grade is 0” for the grade modifier for clinical studies (GMCS). Dr. Snead concluded that appellant did not have any permanent impairment of the left lower extremity under the A.M.A., *Guides*.³

On December 7, 2023 OWCP referred appellant’s case to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA). It requested that he review the medical evidence of record, including Dr. Snead’s report, and provide an opinion on appellant’s permanent disability under the sixth edition of the A.M.A., *Guides*.

In a report dated December 19, 2023, Dr. Hammel indicated that he had reviewed the medical evidence of record and noted that, under the A.M.A., *Guides*, appellant’s lower extremity condition would not be evaluated under the range of motion (ROM) rating method. He indicated that appellant’s claim had been accepted for “displaced transverse fracture of left patella, initial encounter for closed fracture.” However, when he applied the DBI rating method under Table 16-3 (Knee Regional Grid), Dr. Hammel advised that appellant’s diagnosis of “patella fracture, nondisplaced with abnormal examination findings” resulted in a Class 1

² A.M.A., *Guides* (6th ed. 2009).

³ In addition to finding no permanent impairment under the DBI rating method, Dr. Snead also indicated that appellant did not have any permanent impairment due to ROM deficits.

impairment. He assigned a GMFH of 0 based on a normal gait. Dr. Hammel found that the GMPE and GMCS did not apply as the physical examination and clinical studies determined the CDX. He utilized the net adjustment formula, $(GMFH - CDX) = (0 - 1) = -1$, which resulted in movement from grade C to grade D and yielded a final calculation of six percent permanent impairment of the left lower extremity. Dr. Hammel noted that Dr. Snead reported abnormal examination findings but provided an “inappropriately low impairment rating.” He found that appellant reached MMI on October 23, 2023, the date of Dr. Snead’s examination.

By decision dated January 5, 2024, OWCP granted appellant a schedule award for six percent permanent impairment of the left lower extremity (left patella). The award ran for 17.28 weeks from October 23, 2023 through February 20, 2024, and was based on Dr. Hammel’s December 19, 2023 impairment rating.

LEGAL PRECEDENT

The schedule award provisions of FECA⁴ and its implementing federal regulations⁵ 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 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.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

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 DBI where impairment class is determined by the diagnosis and specific criteria as adjusted by the GMFH, GMPE, and GMCS. It further provides that alternative approaches are also provided for calculating impairment for peripheral nerve deficits, complex regional pain syndrome, amputation, and range of motion. ROM is primarily used as a physical examination adjustment factor.⁸ The A.M.A., *Guides*, however, also explain that some of the diagnosis-based grids refer to the range of motion 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.⁹

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.*; see *V.J.*, Docket No. 1789 (issued April 8, 2020); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ A.M.A., *Guides* (6th ed. 2009) 497, section 16.2.

⁹ *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).

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) beginning on page 509.¹⁰ Under this 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 $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$.¹¹ 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.¹²

ANALYSIS

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

OWCP based its schedule award determination on the December 19, 2023 report of Dr. Hammel, the DMA, who reviewed the findings of Dr. Snead, OWCP's referral physician. In this report, Dr. Hammel acknowledged that appellant's claim had been accepted for a displaced transverse closed fracture of the left patella. However, he utilized the diagnosis of "patella fracture, nondisplaced with abnormal examination" when he applied Table 16-3 (Knee Regional Grid), page 510, of the sixth edition of the A.M.A., *Guides*, and he found that this diagnosis fell under Class 1. Dr. Hammel utilized the DBI rating method under the same table and assigned a GMFH of 0 based on a normal gait. He found that the GMPE and GMCS did not apply as the physical examination and clinical studies determined the CDX. Dr. Hammel utilized the net adjustment formula, $(GMFH - CDX) = (0 - 1) = -1$, which resulted in movement from grade C to grade D and yielded a final calculation of six percent permanent impairment of the left lower extremity.

The Board notes that appellant's claim was accepted for displaced transverse closed fracture of the left patella, and Dr. Hammel did not explain why he applied the DBI rating method by using the diagnosis of nondisplaced left patella fracture. OWCP's procedures provide that, if the DMA neglects to provide rationale for the percentage of permanent impairment specified, OWCP should request a clarification or a supplemental report from the DMA.¹³ Dr. Hammel, in his role as DMA, failed to provide such rationale in the present case.

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹⁴ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It

¹⁰ *Id.* at 509-11.

¹¹ *Id.* at 515-22.

¹² *Id.* at 23-28.

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6f(2) (March 2017).

¹⁴ *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); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

has the obligation to see that justice is done.¹⁵ Accordingly, once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁶

The case must therefore be remanded to OWCP to request that Dr. Hammel, in his role as DMA, provide clarification of his opinion on the permanent impairment of appellant's left lower extremity under the sixth edition of the A.M.A., *Guides*. OWCP will request that Dr. Hammel fully explain his impairment rating methodology, particularly with regard to the diagnosis utilized in the rating process. After this, and such other further development as deemed necessary, it 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 January 5, 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: September 9, 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

¹⁵ *C.L.*, Docket No. 20-1631 (issued December 8, 2021); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁶ *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).