United States Department of Labor
Employees' Compensation Appeals Board

R.A., Appellant	)	
and	)	**Docket No. 18-0868**
	)	**Issued: October 25, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Bell, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 19, 2018 appellant, through counsel, filed a timely appeal from an October 13, 2017 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 permanent impairment of his left lower extremity, or that he has more than two percent permanent impairment of his right lower extremity, for which he previously received a schedule award.

FACTUAL HISTORY

On September 23, 1992 appellant, then a 33-year-old mail equipment handler, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury while at work on September 22, 1992 when his right leg was hit by a skid which had been pushed by a forklift. OWCP accepted that he sustained a right knee sprain, right leg contusion, and lumbar sprain.

Appellant stopped work on September 23, 1992 and returned to light-duty work on a part-time basis on September 14, 1993 with a permanent restriction of lifting no more than 10 pounds. He stopped working on April 14, 2009 because the employing establishment was no longer able to provide work within his medical restrictions.[3]

A March 11, 1993 magnetic resonance imaging (MRI) scan of appellant's lumbar spine revealed mild exaggeration of the lumbar lordotic curve, left lateral disc protrusion at L4-5, mild central and mild-to-moderate proximal left nerve root canal stenosis, central and right lateral disc protrusion at L5-S1, and mild-to-moderate central and moderate proximal right nerve root canal stenosis.

The record contains no medical reports dated between 1994 and 2008. During this period, appellant continued working on a full-time basis under work restrictions provided in 1994 by Dr. Lauren Colloff, an attending orthopedic surgeon.[4] In a September 2, 2008 report, Dr. Paul J. Papanek, an attending Board-certified occupational physician, diagnosed chronic low back pain and indicated that appellant should continue with modified work.

A July 7, 2011 MRI scan of appellant's lumbar spine showed disc desiccation at L4-S1, minimal disc bulge at L2-3, moderate disc bulge at L3-4, and mild disc bulge at L4-S1.

On February 20, 2013 appellant underwent OWCP-approved partial medial meniscectomy surgery of his right knee.

In a December 30, 2014 report, Dr. Robert Pandya, an attending Board-certified occupational medicine physician, noted that appellant presented complaining of midline low back pain and right knee pain. He detailed the findings of the physical examination he conducted on that date, noting that appellant had full range of motion of his lumbar spine, bilateral tenderness to palpation of his lumbar midline and paraspinal muscles, 5/5 strength in his bilateral lower limbs, and sensation within normal limits in his bilateral lower limbs. Appellant exhibited tenderness in

[3] Appellant received disability compensation on the daily rolls beginning April 14, 2009 and on the periodic rolls beginning June 7, 2009.

[4] The restrictions included lifting no more than 10 pounds, standing, walking, or sitting for no more than one hour at a time.

the medial joint line of his right knee and limited range of motion of his right knee. Dr. Pandya diagnosed right knee joint pain, current right knee meniscus tear, and lumbar radiculopathy.

On August 28, 2015 Dr. Pandya reported that appellant's chief complaint was low back pain. He indicated that, upon physical examination, appellant had full range of motion of his lumbar spine, bilateral tenderness to palpation of his paraspinal muscles, 5/5 strength in his bilateral lower limbs, and sensation within normal limits in his bilateral lower limbs. Dr. Pandya diagnosed stable lumbar radiculopathy.

In a July 6, 2016 report, Dr. Mesfin Seyoum, an attending Board-certified family practitioner, detailed the findings of the physical examination he conducted on that date. He noted that, with respect to both lower extremities, appellant had 4/5 motor strength in his ankle dorsiflexor, extensor hallucis longus, and plantar flexor muscles. Appellant exhibited decreased sensation of bilateral L4, L5, and S1 dermatomes, including two-point discrimination, light touch, and pain sensations. Dr. Seyoum diagnosed lumbar disc displacement, lumbar radiculitis, degenerative changes of the lumbar spine, right knee meniscal tear, right knee arthrosis, right knee sprain, right knee contusion, and lumbar strain sprain, and he concluded that these conditions were caused by appellant's September 22, 1992 employment injury. He provided calculations for the permanent impairment of appellant's lower extremities under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[5] and *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009) (*The Guides Newsletter*).[6] Using *The Guides Newsletter*, Dr. Seyoum calculated the following percentages of left lower extremity permanent impairment ratings for sensory and motor loss associated with specific nerve distributions: six percent (associated with the left L4 nerve), six percent (left L5 nerve), and four percent (left S1 nerve).[7] He also calculated the following percentages of right lower extremity permanent impairment ratings for sensory and motor loss associated with specific nerve distributions: 11 percent (right L4 nerve), 6 percent (right L5 nerve), and 4 percent (right S1 nerve). With respect to the right lower extremity, Dr. Seyoum also used the diagnosis-based impairment (DBI) rating method, found in Table 16-3 on page 511 of the sixth edition of the A.M.A., *Guides*, to determine that appellant had nine percent right lower extremity permanent impairment due to his right knee arthritis.

On August 9, 2016 appellant filed a claim for compensation (Form CA-7) seeking a schedule award due to his accepted employment injuries.

OWCP referred appellant's case to Dr. Michael M. Katz, a Board-certified orthopedic surgeon, to serve in his capacity as an OWCP medical adviser. It requested that Dr. Katz review the medical evidence of record, including Dr. Seyoum's July 6, 2016 report, and provide an opinion on the extent of permanent impairment of appellant's lower extremities under the sixth edition of the A.M.A., *Guides*.

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

[6] *See infra* note 23.

[7] For each of these calculations, Dr. Seyoum derived a physical examination grade modifier and a functional history grade modifier, and he applied these values to the net adjustment formula to determine whether an increase or decrease from the default value was warranted. *See id.*

In an August 18, 2016 report, Dr. Katz provided a summary of the permanent impairment calculations provided by Dr. Seyoum in his July 6, 2016 report.[8] He further indicated that Dr. Pandya had reported on August 28, 2015 that appellant had 5/5 motor strength in his bilateral lower limbs and sensation within normal limits throughout his bilateral lower limbs, but opined that such findings were "in direct conflict" with those of Dr. Seyoum. Dr. Katz noted that Dr. Seyoum calculated permanent impairment ratings for bilateral motor and sensory deficits of the L4, L5, and S1 nerve distributions based on examination findings of 4/5 strength of the bilateral ankle dorsiflexor, extensor hallucis longus, and plantar flexor muscles. He noted, "The difference presents a significant conflict of information/medical opinion that cannot be resolved on the basis of a medical records review." Dr. Katz recommended that appellant be referred for a second opinion examination with an orthopedic surgeon or physical medicine and rehabilitation physician familiar with the sixth edition of the A.M.A., *Guides*.

In December 2016, OWCP referred appellant for a second opinion examination to Dr. Mark D. Bernhard, a Board-certified physical medicine and rehabilitation physician, and requested that he provide an opinion on the extent of permanent impairment of appellant's lower extremities under the sixth edition of the A.M.A., *Guides*.

In a January 16, 2017 report, Dr. Bernhard discussed appellant's factual and medical history and noted that appellant presented on that date with complaints of low back pain and pain/tingling sensation radiating down both legs to his feet. Appellant also complained of right knee pain/numbness and right foot numbness. Dr. Bernhard detailed the findings of the physical examination he conducted on January 16, 2017, noting that appellant reported tenderness over the right paraspinous region of his lumbar spine and that range of motion of his lumbar spine was satisfactory. Appellant's bilateral knee and ankle jerks were within normal limits and sensation to light touch and pinprick were intact bilaterally in his lumbar region. Dr. Bernhard indicated that muscle strength was within normal limits (5/5) in the lower extremities, including in the bilateral extensor hallucis longus muscles, and noted that straight leg testing was negative in both lower extremities. Appellant exhibited mild tenderness at the medial joint of his right knee, but there was no swelling in either knee.[9] Dr. Bernhard advised that appellant had flexion and extension from 0 to 135 degrees in both knees and that Lachman and McMurray testing was negative bilaterally.[10]

Dr. Bernhard conducted an evaluation of the extent of permanent impairment of appellant's right lower extremity utilizing the DBI rating method described in Table 16-3 (Knee Regional Grid) beginning on page 509 of the sixth edition of the A.M.A., *Guides*. He determined that, under Table 16-3 on page 509, the partial medial meniscectomy of appellant's right knee was a class 2

[8] Dr. Katz essentially repeated the calculations as made by Dr. Seyoum. However, with respect to permanent impairment associated with the left L4 nerve distribution, he found that application of the net adjustment formula of *The Guides Newsletter* would result in 11 percent permanent impairment of the left lower extremity, rather than 6 percent permanent impairment as calculated by Dr. Seyoum.

[9] Dr. Bernhard noted that appellant had a mild antalgic limp which corrects with modification and orthotics.

[10] Dr. Bernhard provided diagnoses which he indicated were related to the September 22, 1992 employment injury including left L4-5 paracentral disc extrusion effacing the left L5 nerve root, right L5 disc bulge with disc extrusion, complex tear of the right medial meniscus, tear of the right lateral medial meniscus, horizontal tear at the posterior horn of the right medial meniscus, and radial tear at the body of the right medial meniscus.

condition which yielded a default value of two percent for permanent impairment of the right lower extremity. Under Table 16-6 through Table 16-8 on pages 516 through 520, appellant had functional history grade modifier of 1 (mild problem involving correctible mild antalgic gait) and a physical examination grade modifier of 1 (mild problem involving mild tenderness). The clinical studies grade modifier was not applicable because clinical studies were used to assign the correct class. Dr. Bernhard advised that application of the net adjustment formula on page 521 did not require movement from the two percent default value, and he concluded that appellant had two percent permanent impairment of his right lower extremity due to right knee deficits. He further explained that he was rating the permanent impairment of appellant's lower extremities under the standards of *The Guides Newsletter*. Dr. Bernhard found that, given that appellant exhibited no sensory or motor loss of his lower extremities upon the January 16, 2017 examination, his bilateral lower extremity condition fell under class 0 according to the standards of *The Guides Newsletter*, with no sensory or motor rating being applicable for deficits related to a spinal condition extending into his lower extremities. Due to this determination, he found that appellant had no permanent impairment of his left lower extremity.[11]

On February 22, 2017 OWCP requested that Dr. Katz review Dr. Bernhard's January 16, 2017 report in his capacity as an OWCP medical adviser and provide an opinion on the extent of permanent impairment of appellant's lower extremities.

In a February 23, 2017 report, Dr. Katz indicated that had reviewed Dr. Bernhard's January 16, 2017 report and noted that he concurred with his determination that appellant had two percent permanent impairment of his right lower extremity under the DBI rating method. He advised he agreed that, under Table 16-3, the partial medial meniscectomy of appellant's right knee was a class 2 condition which yielded a default value of two percent for permanent impairment of the right lower extremity. Dr. Katz also noted that, after determination of the grade modifiers, application of the net adjustment formula required no movement from the default value of two percent permanent impairment of his right lower extremity.[12] He indicated that Dr. Bernhard properly advised that FECA does not allow a schedule award for the spine and that permanent impairment originating from a diagnosed employment injury originating in the spine is calculated using the method described in *The Guides Newsletter*. Dr. Katz noted that Dr. Bernhard had determined that appellant exhibited no motor or sensory deficits in his lower extremities and therefore had properly found no lower extremity impairment related to an accepted spinal condition.[13] Therefore, he found that appellant had no permanent impairment of his left lower extremity. Dr. Katz determined that appellant reached MMI on January 17, 2017, the date of Dr. Bernhard's examination.

By decision dated March 1, 2017, OWCP granted appellant a schedule award for two percent permanent impairment of his right lower extremity. The award ran for 5.76 weeks from January 16 to February 25, 2017 and was based on the opinions of Dr. Bernhard and Dr. Katz.

[11] Dr. Bernhard found that appellant reached maximum medical improvement (MMI) on April 30, 2013, approximately nine weeks after appellant's February 20, 2013 right knee surgery.

[12] Dr. Katz inadvertently indicated that Dr. Bernhard assigned a value for the clinical studies grade modifier rather than finding it not applicable.

[13] Dr. Katz indicated that Dr. Bernhard's findings were consistent with the August 28, 2015 findings of Dr. Pandya.

On March 13, 2017 appellant, through counsel, requested a hearing with a representative of OWCP's Branch of Hearings and Review.

During the hearing held on August 31, 2017, counsel argued that Dr. Seyoum's findings were dismissed in an improper manner given that Dr. Seyoum documented weakness and sensory loss in appellant's lower extremities. He argued that there was a conflict in the medical opinion evidence requiring referral to an impartial medical specialist.

By decision dated October 13, 2017, OWCP's hearing representative affirmed OWCP's March 1, 2017 decision. He found that Dr. Bernhard and Dr. Katz properly determined that appellant had no permanent impairment of his left lower extremity, and two percent permanent impairment of his right lower extremity under the relevant standards. The hearing representative found that there was no conflict in the medical opinion evidence created by Dr. Seyoum's July 6, 2016 report because Dr. Seyoum calculated bilateral lower extremity impairment caused by conditions not accepted as related to the September 22, 1992 employment injury, including lumbar disc displacement, lumbar radiculitis, and degenerative changes of the lumbar spine.

LEGAL PRECEDENT

The schedule award provision of FECA,[14] and its implementing federal regulation,[15] 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.[16] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[17]

In determining the extent of permanent 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 right leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.[18] After the class of diagnosis (CDX) is determined from the Knee Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for functional history (GMFH), grade modifier for physical examination (GMPE), and grade modifier for clinical studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[19] Under Chapter 2.3, evaluators are directed to provide reasons

[14] 5 U.S.C. § 8107.

[15] 20 C.F.R. § 10.404.

[16] *Id.* at § 10.404(a).

[17] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

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

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

for their impairment rating choices, including choices of diagnoses from regional grids and calculations of grade modifier scores.[20]

Neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.[21] However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.[22] The sixth edition of the A.M.A., *Guides* provides a specific methodology for rating spinal nerve extremity impairment.[23] It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine. FECA-approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities. The appropriate tables for rating spinal nerve extremity impairment are incorporated in the Federal (FECA) Procedure Manual.[24]

OWCP's procedures provide that an OWCP medical adviser's primary medical functions are evaluating medical evidence and interpreting physician reports. An OWCP claims examiner seeks evaluation from OWCP's medical adviser in order to proceed with developing and weighing the medical evidence. An OWCP claims examiner must always maintain responsibility for the case and should not consult OWCP's medical adviser to adjudicate claims or determine benefit entitlement, as these are primary functions of OWCP's claims examiner.[25]

In some instances, OWCP's medical adviser's opinion can constitute the weight of the medical evidence. This occurs in schedule award cases where an opinion on the percentage of permanent impairment and a description of physical findings is on file from an examining physician, but the percentage estimate by this physician is not based on the A.M.A., *Guides*. As long as OWCP's medical adviser explains his or her opinion, shows values and computation of impairment based on the A.M.A., *Guides*, and considers each of the reported findings of impairment, his or her opinion may constitute the weight. If the attending physician misapplied the A.M.A., *Guides*, no conflict would exist because the attending physician's report would have diminished probative value and the opinion of OWCP's medical adviser would constitute the weight of medical opinion.[26]

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

[21] 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

[22] *Supra* note 17 at Chapter 2.808.5c(3) (March 2017).

[23] The methodology and applicable tables were initially published in *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/August 2009). *Id.*

[24] *See supra* note 17 at Chapter 3.700, Exhibit 4 (January 2010).

[25] *See supra* note 17 at Chapter 2.810.8(b), (c) (September 2010).

[26] *Id.* at Chapter 2.810.8(j) (September 2010); *M.P.*, Docket No. 14-1602 (issued January 13, 2015). Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a). When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence. *William C. Bush*, 40 ECAB 1064, 1975 (1989).

ANALYSIS

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

OWCP accepted that appellant sustained a right knee sprain, right leg contusion, and lumbar sprain on September 22, 1992 when his right leg was hit by a skid which had been pushed by a forklift. On August 9, 2016 appellant filed a claim for compensation seeking a schedule award due to his accepted employment injuries. By decision dated March 1, 2017, OWCP granted him a schedule award for two percent permanent impairment of his right lower extremity. The award was based on the opinions of Dr. Bernhard, an OWCP referral physician, and Dr. Katz, an OWCP medical adviser. By decision dated October 13, 2017, OWCP's hearing representative affirmed OWCP's March 1, 2017 decision and also found that the same physicians properly determined that appellant had no left lower extremity permanent impairment.

The Board finds that Dr. Bernhard properly determined that appellant has two percent permanent impairment of his right lower extremity and zero percent permanent impairment of his left lower extremity.[27] On January 16, 2017 Dr. Bernhard conducted an evaluation of the extent of permanent impairment of appellant's right lower extremity using the DBI rating method described in Table 16-3 of the sixth edition of the A.M.A., *Guides.* He correctly determined that, under Table 16-3, the partial medial meniscectomy of appellant's right knee was a class 2 condition which yielded a default value of two percent for permanent impairment of the right lower extremity.[28] Dr. Bernhard made determinations regarding grade modifiers under Table 16-6 through Table 16-8 and advised that application of the net adjustment formula did not require movement from the two percent default value. He properly concluded that appellant had two percent permanent impairment of his right lower extremity due to his right knee condition. Dr. Bernhard further explained that he was also rating the permanent impairment of appellant's lower extremities under the standards of *The Guides Newsletter.* He properly found that, given that appellant exhibited no sensory or motor loss of his lower extremities upon the January 16, 2017 examination, his bilateral lower extremity condition fell under class 0 according to the standards of *The Guides Newsletter*, with no sensory or motor rating being applicable for deficits related to a spinal condition extending into his lower extremities. Due to this determination, Dr. Bernhard found that appellant had no permanent impairment of his left lower extremity.[29]

[27] The Board notes that it was appropriate for OWCP to refer appellant to Dr. Bernhard for further evaluation of the permanent impairment of his lower extremities. As noted by Dr. Katz on August 18, 2016, there were significant discrepancies between the lower extremity findings of Dr. Pandya and Dr. Seyoum which required further development of the medical evidence. *See supra* note 25 regarding OWCP procedures describing the role of OWCP's medical adviser in aiding OWCP in the development of evidence.

[28] A.M.A., *Guides* 509, Table 16-3.

[29] Dr. Bernhard found that appellant reached MMI on April 30, 2013, approximately nine weeks after his February 20, 2013 right knee surgery. In the physical examination portion of his report, he indicated, without explanation, that several lumbar conditions were related to the September 22, 1992 employment injury which have not been accepted as employment related. The Board notes that Dr. Bernhard's finding of no employment-related impairment of the lower extremities stemming from the lumbar spine is based on his determination that the findings of the January 16, 2017 physical examination did not show any such impairment.

The Board further finds that Dr. Katz also properly determined that appellant has two percent permanent impairment of his right lower extremity and zero percent permanent impairment of his left lower extremity. On February 23, 2017 Dr. Katz indicated that he had reviewed Dr. Bernhard's January 16, 2017 report and noted that he concurred with his determination that appellant had two percent permanent impairment of his right lower extremity due to right knee deficits under the DBI rating method. He expressed agreement with Dr. Bernhard's choice of the most impairing right knee diagnosis and grade modifiers, as well as the application of the net adjustment formula.[30] Dr. Katz also noted that Dr. Bernhard determined that appellant had no motor or sensory deficits in his lower extremities stemming from a work-related spinal condition and therefore properly found no lower extremity impairment related to an accepted spinal condition under *The Guides Newsletter*.[31] Therefore, he properly found that appellant had no permanent impairment of his left lower extremity.

Counsel argues that Dr. Seyoum's July 6, 2016 report created a conflict in the medical opinion evidence regarding the extent of permanent impairment of appellant's lower extremities which requires referral to an impartial medical specialist. The Board notes, however, that no such conflict exists because Dr. Seyoum's July 6, 2016 report is of limited probative value regarding the permanent impairment of appellant's lower extremities.[32] Dr. Seyoum provided an opinion that appellant had several lower extremity conditions which were causally related to the September 22, 1992 employment injury (including lumbar radiculitis, lumbar disc displacement, and degenerative changes of the lumbar spine) which caused permanent impairment of his lower extremities as determined under *The Guides Newsletter*.[33] As noted above, a lower extremity schedule award is permissible where an employment-related spinal condition affects the lower extremities.[34] However, these conditions identified by Dr. Seyoum have not been accepted as employment related and he did not provide a rationalized medical opinion relating them to the September 22, 1992 employment injury or other employment-related cause.[35] With respect to the right lower extremity, he found that under the DBI rating method described in Table 16-3 appellant had nine percent right lower extremity permanent impairment due to his right knee arthritis. However, OWCP has not accepted that appellant has worked-related arthritis of his right knee and Dr. Seyoum has not provided a rationalized opinion on causal relationship. Therefore,

[30] Dr. Katz inadvertently indicated that Dr. Bernhard assigned a value for the clinical studies grade modifier rather than finding it not applicable. However, Dr. Katz concluded, as did Dr. Bernhard, that appellant had two percent permanent impairment of his right lower extremity.

[31] Dr. Katz determined that appellant reached MMI on January 17, 2017, the date of Dr. Bernhard's examination.

[32] *See supra* note 26.

[33] Using *The Guides Newsletter*, Dr. Seyoum calculated the following percentages of left lower extremity permanent impairment ratings for sensory and motor loss associated with specific nerve distributions: six percent (associated with the left L4 nerve distribution), six percent (left L5), and four percent (left S1).[33] He also calculated the following percentages of right lower extremity permanent impairment ratings for sensory and motor loss associated with specific nerve distributions: 11 percent (right L4 nerve), 6 percent (right L5), and 4 percent (right S1).

[34] *See supra* note 22.

[35] *See D.R.*, Docket No. 16-0528 (issued August 24, 2016) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining the relationship between a given diagnosed medical condition and employment factors).

Dr. Seyoum's opinion regarding right lower extremity permanent impairment due to right knee deficits is of limited probative value.[36]

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 impairment.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

[36] *See id.*