United States Department of Labor
Employees' Compensation Appeals Board

W.R., Appellant	)	
and	)	**Docket No. 17-1605**
	)	**Issued: September 19, 2018**
DEPARTMENT OF THE AIR FORCE, MATERIEL COMMAND, TINKER AIR FORCE BASE, OK, Employer	)	

Appearances:
Appellant, pro se
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 July 18, 2017 appellant filed a timely appeal from May 22 and 23, 2017 merit decisions 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record contains a June 13, 2017 decision in which OWCP set aside a March 2, 2017 decision regarding appellant's request for authorization for right total knee replacement surgery and remanded the case for further development. As this matter is in an interlocutory posture, it is not before the Board. *See* 20 U.S.C. § 501.2(c)(2) (providing that there will be no appeal with respect to any interlocutory matter decided (or not decided) during the pendency of a case).

ISSUE

The issue is whether appellant has met her burden of proof to establish more than 40 percent permanent impairment of her left lower extremity and 20 percent permanent impairment of her right lower extremity, for which she previously received schedule award compensation.

FACTUAL HISTORY

On December 2, 2008 appellant, then a 51-year-old supervisory logistics management specialist, filed a traumatic injury claim (Form CA-1) alleging that, on November 24, 2008, while at work, she sustained injury due to falling off a chair while reaching for her purse on the floor. She stopped work on January 26, 2009.

OWCP initially accepted appellant's claim for right knee/leg sprain (unspecified sites), medial collateral ligament sprain of the right knee, and medial meniscus tear of the right knee. Appellant received leave buy back for the period January 26 to April 30, 2009.

OWCP expanded the acceptance of the claim to include the conditions of medial meniscus tear of the left knee, medial collateral ligament sprain of the left knee, bilateral localized primary osteoarthritis/traumatic arthropathy of the lower legs, depressive disorder, sprains of the lumbar spine, sacroiliac ligaments, pelvis, left ankle, left hip, and left knee/leg, and other unspecified disorders of muscles, ligaments, and fascia.

On April 6, 2009 appellant underwent OWCP-approved right knee surgery, including partial medial meniscectomy and chondroplasty of the patellofemoral joint/medial femoral condyle.

On September 28, 2009 appellant underwent OWCP-approved partial medial and lateral meniscectomies of the left knee.

On January 27, 2010 appellant filed a claim for compensation (Form CA-7) seeking a schedule award due to her accepted employment-related conditions.

In a February 4, 2010 report, Dr. Todd Olsen, an attending Board-certified orthopedic surgeon, concluded that appellant had 18 percent permanent impairment of her left lower extremity under of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3] On April 1, 2010 Dr. Ronald Blum, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, agreed with Dr. Olsen's impairment rating evaluation.

In a July 22, 2010 report, Dr. Michael S. Smith, a Board-certified physical medicine and rehabilitation physician serving as an OWCP referral physician, determined that appellant had 20 percent permanent impairment of her left lower extremity and 8 percent permanent impairment of her right lower extremity under the sixth edition of the A.M.A., *Guides*.

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

By decision dated December 29, 2010, OWCP issued an award of compensation for 18 percent permanent impairment of her left lower extremity.[4]

In March 2011, OWCP referred the case to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP medical adviser. It requested that Dr. Katz review Dr. Smith's July 22, 2010 report and provide an opinion regarding appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*. In a March 31, 2011 report, Dr. Katz determined that appellant had 20 percent permanent impairment of her left lower extremity and 9 percent permanent impairment of her right lower extremity under the sixth edition of the A.M.A., *Guides*.

By decision dated April 6, 2011, OWCP granted appellant a schedule award for an additional 2 percent permanent impairment of her left lower extremity (20 percent permanent impairment minus 18 percent permanent impairment previously awarded) and for 9 percent permanent impairment of her right lower extremity.

On January 5, 2012 appellant filed a claim for compensation (Form CA-7) seeking an increased schedule award due to her accepted employment conditions.[5]

In a February 15, 2012 report, Dr. Christopher Jordan, a Board-certified orthopedic surgeon serving as an OWCP referral physician, determined that appellant had 9 percent permanent impairment of her left lower extremity and 20 percent permanent impairment of her right lower extremity under the sixth edition of the A.M.A., *Guides*. On March 30, 2012 Dr. Mobley, serving as an OWCP medical adviser, agreed with Dr. Jordan's impairment rating evaluation.

By decision dated April 6, 2012, OWCP granted appellant a schedule award for an additional 11 percent permanent impairment of her right lower extremity (20 percent permanent impairment minus 9 percent permanent impairment previously awarded).

Appellant underwent additional OWCP-approved surgeries, including left total knee replacement on October 15, 2012, and partial medial/lateral meniscectomies and synovectomy of the suprapatellar pouch of the right knee on March 29, 2013.

[4] It is unclear why OWCP did not consider Dr. Smith's July 22, 2010 report prior to issuing this schedule award.

[5] Appellant submitted an August 15, 2011 report in which Dr. John W. Ellis, an attending Board-certified family practitioner, determined that appellant had 32 percent permanent impairment of her left lower extremity and 16 percent permanent impairment of her right lower extremity. On January 12, 2012 Dr. Henry Mobley, a Board-certified internist serving as an OWCP medical adviser, indicated that he was unable to calculate a schedule award based on Dr. Ellis' August 15, 2011 report and recommended that OWCP refer appellant for a second opinion examination and impairment evaluation.

On October 28, 2013 appellant filed a Form CA-7 seeking additional schedule award compensation.[6]

In a January 27, 2014 report, Dr. Timothy G. Pettingell, a Board-certified physical medicine and rehabilitation physician serving as an OWCP referral physician, concluded that appellant had 31 percent permanent impairment of her left lower extremity and 8 percent permanent impairment of her right lower extremity under the sixth edition of the A.M.A., *Guides*. On March 21, 2014 Dr. Mobley, serving as an OWCP medical adviser, agreed with Dr. Pettingell's impairment rating evaluation.

By decision dated June 20, 2014, OWCP issued appellant a schedule award for an additional 11 percent permanent impairment of her left lower extremity (31 percent permanent impairment minus 20 percent permanent impairment previously awarded).

Appellant submitted a June 25, 2015 report from Dr. Donald E. Adams, an attending Board-certified orthopedic surgeon, who reported the findings of the physical examination he conducted on that date. Dr. Adams indicated that, upon range of motion testing, appellant had left knee flexion to 98 degrees and right knee flexion to 120 degrees. There was no instability upon varus-valgus stress testing of both knees. Dr. Adams indicated that, under Table 16-3 on page 511 of the sixth edition of the A.M.A., *Guides*, appellant's left total knee replacement fell under class 3 with a default value of 37 percent permanent impairment of her left lower extremity. Under Table 16-16 through Table 16-18 on pages 516 through 520, appellant had a functional history grade modifier of 3, a physical examination grade modifier of 2, and a clinical studies grade modifier of 1. Dr. Adams noted that application of the net adjustment formula on page 521 required movement one space to the left of the default value under Table 16-3 which meant that she had 34 percent permanent impairment of her left lower extremity due to her left knee replacement surgery. Under Table 16-2 on page 509, appellant's soft tissue left ankle/foot condition fell under class 1 with a default value of one percent permanent impairment of her left lower extremity. Application of the net adjustment formula required movement to the space on Table 16-2 for two percent permanent impairment of her left lower extremity due to left ankle/foot deficits.

Dr. Adams used the Combined Values Chart on page 604 to combine the above-detailed 34 and 2 percent impairment ratings and he concluded that appellant had 35 percent permanent impairment of her left lower extremity. He further indicated that, under Table 16-3 on page 509, the partial medial and lateral meniscectomies of her right knee fell under class 1 with a default value of 10 percent permanent impairment of her right lower extremity. Application of the net adjustment formula required movement two spaces to the right of the default value under Table 16-3 which meant that appellant had 13 percent permanent impairment of her right lower extremity due to her right knee surgery.

[6] Appellant submitted an August 12, 2013 report in which Dr. Ellis concluded that appellant had 59 percent permanent impairment of her left lower extremity and 35 percent permanent impairment of her right lower extremity. On November 29, 2013 Dr. Michael M. Katz, serving as an OWCP medical adviser, indicated that he was unable to calculate a schedule award based on Dr. Ellis' August 12, 2013 report and recommended that OWCP refer appellant for a second opinion examination and impairment evaluation.

On November 2, 2015 appellant filed a Form CA-7 seeking increased schedule award compensation.

In support of her claim for increased schedule award compensation, appellant submitted an October 2, 2015 addendum report from Dr. Adams. In this report, Dr. Adams indicated that, under Table 16-4 on page 514, her left hip arthritis fell under class 1 with a default value of seven percent permanent impairment of her left lower extremity. Appellant had a functional history grade modifier of 3, physical examination grade modifier of 2, and clinical studies grade modifier of 1. Dr. Adams noted that application of the net adjustment formula required movement to the space on Table 16-4 for nine percent permanent impairment of her left lower extremity due to left hip arthritis. He used the Combined Values Chart to combine the 35 percent permanent impairment rating of the left lower extremity due to left knee and ankle/foot deficits (described in his June 25, 2015 report) with the 9 percent permanent impairment rating of the left lower extremity due to left hip deficits. Dr. Adams concluded that appellant had 41 percent permanent impairment of her left lower extremity.

In October 2016, OWCP referred appellant to Dr. Michael S. Brown for a second opinion evaluation and an opinion on permanent impairment. In a November 8, 2016 report, Dr. Brown determined that appellant had 22 percent permanent impairment of her left lower extremity and 8 percent permanent impairment of her right lower extremity under the sixth edition of the A.M.A, *Guides*. He noted that, under Table 16-3 on page 511, appellant's left total knee replacement fell under class 2 with a default value of 25 percent permanent impairment of her left lower extremity. Dr. Brown indicated that she had a functional history grade modifier of 2, physical examination grade modifier of 1, and clinical studies grade modifier of 0. He noted that application of the net adjustment formula required movement two spaces to the left of the default value under Table 16-3 which meant that appellant had 21 percent permanent impairment of her left lower extremity due to her left knee replacement surgery. Under Table 16-2 on page 506, appellant's left foot talonavicular condition fell under class 1 with a default value of one percent permanent impairment of her left lower extremity. Dr. Brown indicated that she had a physical examination grade modifier of 1, and that the functional history and clinical studies grade modifiers were not applicable. Application of the net adjustment formula did not require any movement from the default value on Table 16-2 and therefore appellant had one percent permanent impairment of her left lower extremity due to left foot deficits.

Dr. Brown used the Combined Values Chart on page 604 to combine the above-detailed 21 and 1 percent impairment ratings and he concluded that appellant had 22 percent permanent impairment of her left lower extremity. He further indicated that, under Table 16-3 on page 509, the partial medial and lateral meniscectomies of her right knee fell under class 1 with a default value of 10 percent permanent impairment of her right lower extremity. Dr. Brown noted that appellant had a physical examination grade modifier of 1 and clinical studies grade modifier of 0, and that the functional history grade modifier was not applicable. Application of the net adjustment formula required movement one space to the right of the default value under Table 16-3 which meant that she had eight percent permanent impairment of her right lower extremity due to her right knee surgery.

On December 7, 2016 OWCP referred Dr. Brown's November 8, 2016 report to Dr. Katz in his capacity as an OWCP medical adviser and requested that he comment on the permanent impairment of appellant's lower extremities.

In a December 10, 2016 report, Dr. Katz indicated that, under Table 16-3 on page 509, the partial medial and lateral meniscectomies of appellant's right knee fell under class 1 with a default value of 10 percent permanent impairment of the right lower extremity. He noted that she had a functional history grade modifier of 1 and physical examination grade modifier of 1, and that the clinical studies grade modifier was not applicable. Application of the net adjustment formula did not require movement from the default value under Table 16-3 which meant that appellant had 10 percent permanent impairment of her right lower extremity due to her right knee surgery. Dr. Katz advised that she was not entitled to additional schedule award compensation for her right lower extremity because she had already been compensated for 20 percent permanent impairment of her right lower extremity. He also determined that appellant had 23 percent permanent impairment of her left lower extremity due to her left knee, left foot/ankle, and left hip deficits which entitled her to schedule award compensation for an additional 3 percent permanent impairment of her left lower extremity.[7]

By decision dated January 5, 2017, OWCP granted appellant a schedule award for an additional 3 percent permanent impairment of her left lower extremity (34 percent permanent impairment minus 31 percent permanent impairment previously awarded). The award was based on Dr. Katz' December 10, 2016 report.

In April 2017, OWCP referred appellant's case to Dr. Katz in his capacity as an OWCP medical adviser and requested that he comment on the impairment rating for her left lower extremity contained in Dr. Adams' October 2, 2015 report. In an April 29, 2017 report, Dr. Katz found that she had 30 percent permanent impairment of her left lower extremity due to her left knee, left ankle/foot, and left hip deficits.

OWCP requested that Dr. Katz clarify his April 29, 2017 report and he produced a May 3, 2017 report which he advised superseded his December 10, 2016 and April 29, 2017 reports with respect to the permanent impairment of appellant's left lower extremity. Dr. Katz indicated that he had reviewed Dr. Adam's June 15 and October 2, 2015 reports, and noted that the date of maximum medical improvement was June 15, 2015. He indicated that he also had reviewed Dr. Brown's November 8, 2016 report and was modifying Dr. Brown's impairment estimates with respect to left knee and left ankle/foot deficits in a manner which yielded higher impairment ratings. Dr. Katz noted that, under Table 16-3 on page 511, appellant's left total knee replacement fell under class 2 with a default value of 25 percent permanent impairment of her left lower extremity. He indicated that she had a functional history grade modifier of 2 and physical examination grade modifier of 1, and that the clinical studies grade modifier was not applicable.[8]

[7] Dr. Katz indicated that appellant had been previously been awarded schedule award compensation for 20 percent permanent impairment of her left lower extremity and posited that therefore his 23 percent permanent impairment rating showed that she was entitled to additional compensation. In fact, appellant had previously been awarded schedule award compensation for 31 percent permanent impairment of her left lower extremity.

[8] Dr. Katz noted that Dr. Brown had found a clinical studies grade modifier of 0.

Dr. Katz noted that application of the net adjustment formula required movement one space to the left of the default value under Table 16-3 which meant that appellant had 23 percent permanent impairment of her left lower extremity due to left knee replacement surgery.[9] Under Table 16-2 on page 506, appellant's left foot talonavicular condition fell under class 1 with a default value of one percent permanent impairment of her left lower extremity. Dr. Katz indicated that she had a functional history grade modifier of 2 and physical examination grade modifier of 1, and that the clinical studies grade modifier was not applicable. Application of the net adjustment formula did not require any movement from the default value on Table 16-2 and therefore appellant had one percent permanent impairment of her left lower extremity due to left foot deficits. Dr. Katz used the Combined Values Chart on page 604 to combine the above-detailed 23 and 1 percent impairment ratings and he concluded that she had 24 percent permanent impairment of her left lower extremity due to left knee and left foot/ankle deficits.

Dr. Katz then determined that, under Table 16-4 on page 514, appellant's left hip arthritis condition fell under class 1 with a default value of seven percent permanent impairment of her left lower extremity. He determined that she had a functional history grade modifier of 3 and a physical examination grade modifier of 2, and that the clinical studies grade was not applicable. Dr. Katz noted that application of the net adjustment formula required movement to the space on Table 16-4 for nine percent permanent impairment of appellant's left lower extremity due to left hip arthritis. He indicated that the prior, non-overlapping award for permanent impairment of the left lower extremity of 31 percent (related to left foot/ankle and knee deficits) was first combined, using the Combined Values Chart on page 604, with the permanent impairment of the left lower extremity of 9 percent (related to left hip deficits) to yield a value of 37 percent permanent impairment of the left lower extremity. Dr. Katz then subtracted the prior award of 31 percent from this 37 percent figure to equal 6 percent. Therefore, the net additional award then due appellant for permanent impairment of her left lower extremity was six percent.

On May 11, 2017 OWCP requested that Dr. Katz provide clarification of his May 3, 2017 report.

Dr. Katz reviewed the file on May 15, 2017 and produced a May 15, 2017 report. He indicated that the prior, non-overlapping award for permanent impairment of the left lower extremity of 34 percent (related to foot/ankle and knee deficits) was first combined, using the Combined Values Chart on page 604, with the permanent impairment of the left lower extremity of 9 percent (related to left hip deficits) to yield a value of 40 percent permanent impairment of the left lower extremity. Dr. Katz then subtracted the prior award of 34 percent from this 40 percent figure to equal 6 percent. Therefore, the net additional award then due appellant for permanent impairment of her left lower extremity was six percent.

By decision dated May 22, 2017, OWCP affirmed its January 5, 2017 decision with respect to its finding that appellant failed to establish more than 20 percent permanent impairment of her right lower extremity. It set aside its January 5, 2017 decision with respect to the permanent impairment of her left lower extremity and determined that she had 40 percent permanent impairment of that extremity under the sixth edition of the A.M.A., *Guides*. As appellant had

[9] Dr. Katz noted that Dr. Brown had found 21 percent permanent impairment of appellant's left lower extremity due to left knee replacement surgery.

already received schedule award compensation for 34 percent permanent impairment of her left lower extremity, OWCP remanded the case for issuance of a schedule award for an additional six percent permanent impairment of her left lower extremity. OWCP indicated that its determination was based on the opinion of Dr. Katz.

By decision dated May 23, 2017, OWCP granted appellant a schedule award for an additional 6 percent permanent impairment of her left lower extremity (40 percent permanent impairment minus 34 percent permanent impairment previously awarded).

LEGAL PRECEDENT

The schedule award provision of the FECA[10] and its implementing regulations[11] 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses. The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.[12]

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 foot/ankle, knee, and hip, the relevant portions of the lower extremity for the present case, reference is made to Table 16-2 through Table 16-4 beginning on page 501.[13] After the Class of Diagnosis (CDX) is determined from each of these tables (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).[14]

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."[15] When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial

[10] 5 U.S.C. § 8107.

[11] 20 C.F.R. § 10.404 (1999).

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

[13] *See* A.M.A., *Guides* 501-15 (6th ed. 2009).

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

[15] 5 U.S.C. § 8123(a).

medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.[16]

ANALYSIS

The Board finds that, due to a conflict in the medical opinion evidence, the case is not is posture for decision regarding whether appellant has met her burden of proof to establish more than 40 percent permanent impairment of her left lower extremity and 20 percent permanent impairment of her right lower extremity, for which she previously received schedule awards.

By decision dated May 22, 2017, OWCP affirmed its prior determination that appellant failed to establish more than 20 percent permanent impairment of her right lower extremity. It set aside its prior determination with respect to the permanent impairment of her left lower extremity and determined that she had 40 percent permanent impairment of that extremity under the sixth edition of the A.M.A., *Guides*. On May 23, 2017 OWCP granted appellant a schedule award for an additional six percent permanent impairment of her left lower extremity.[17]

First, the Board finds that there is a conflict in the medical opinion between Dr. Katz, OWCP's medical adviser, and Dr. Adams, an attending physician, regarding the extent of the permanent impairment of appellant's left lower extremity which requires further development of the present claim.[18]

In a May 3, 2017 report, Dr. Katz noted that, under Table 16-3 on page 511 of the sixth edition of the A.M.A, *Guides*, appellant's left total knee replacement fell under class 2 with a default value of 25 percent permanent impairment of her left lower extremity.[19] He indicated that she had a functional history grade modifier of 2, physical examination grade modifier of 1, and that the clinical studies grade modifier was not applicable. Dr. Katz noted that application of the net adjustment formula required movement one space to the left of the default value under Table 16-3 which meant that appellant had 23 percent permanent impairment of her left lower extremity due to left knee replacement surgery.[20] Under Table 16-2 on page 506, appellant's left foot talonavicular condition fell under class 1 with a default value of one percent permanent impairment of the left lower extremity. Dr. Katz indicated that she had a functional history grade modifier of 2 and physical examination grade modifier of 1, and that the clinical studies grade modifier was not applicable. Application of the net adjustment formula did not require any movement from the default value on Table 16-2 and therefore appellant had one percent permanent impairment of her left lower extremity due to left ankle/foot deficits. Dr. Katz used the Combined Values Chart on page 604 to combine the above-detailed 23 and 1 percent impairment ratings and he concluded

[16] *William C. Bush*, 40 ECAB 1064, 1975 (1989).

[17] Prior to this time, OWCP had granted appellant schedule awards for total left lower extremity permanent impairment of 34 percent and total right lower extremity permanent impairment of 20 percent.

[18] *See supra* notes 15 and 16.

[19] A.M.A., *Guides* 511, Table 16-3.

[20] *See supra* note 14 regarding the derivation of grade modifiers and application of the net adjustment formula.

that she had 24 percent permanent impairment of her left lower extremity due to her left knee and left foot/ankle deficits.

Dr. Katz then determined that, under Table 16-4 on page 514, appellant's left hip arthritis condition fell under class 1 with a default value of seven percent permanent impairment of her left lower extremity. He found that she had a functional history grade modifier of 3 and a physical examination grade modifier of 2, and that the clinical studies grade was not applicable. Dr. Katz noted that application of the net adjustment formula required movement to the space on Table 16-4 for nine percent permanent impairment of appellant's left lower extremity due to left hip arthritis. He indicated that the prior, non-overlapping award for permanent impairment of the left lower extremity of 31 percent (related to left foot/ankle and knee deficits) was first combined, using the Combined Values Chart on page 604, with the permanent impairment of the left lower extremity of 9 percent (related to left hip deficits) to yield a value of 37 percent permanent impairment of the left lower extremity. Dr. Katz then subtracted the prior award of 31 percent from this 37 percent figure to equal 6 percent and then found that the net additional award then due appellant for permanent impairment of her left lower extremity was 6 percent. He therefore found that she had 40 percent permanent impairment of her left lower extremity.[21]

In contrast, Dr. Adams provided an opinion in a June 25, 2015 report that appellant had a higher degree of left lower extremity permanent impairment under the sixth edition of the A.M.A., *Guides*. He noted that, under Table 16-3 on page 511, her left total knee replacement fell under class 3 with a default value of 37 percent permanent impairment of her left lower extremity. Under Table 16-16 through Table16-18 on pages 516 through 520, appellant had a functional history grade modifier of 3, a physical examination grade modifier of 2, and a clinical studies grade modifier of 1. Dr. Adams noted that application of the net adjustment formula on page 521 required movement one space to the left of the default value under Table 16-3 which meant that she had 34 percent permanent impairment of her left lower extremity due to her left knee replacement surgery. Under Table 16-2 on page 509, appellant's soft tissue left ankle/foot condition fell under class 1 with a default value of one percent permanent impairment of the left lower extremity. Application of the net adjustment formula required movement to the space on Table 16-2 for two percent permanent impairment of her left lower extremity due to left ankle/foot deficits. Dr. Adams used the Combined Values Chart on page 604 to combine the above-detailed 34 and 2 percent impairment ratings and he concluded that appellant had 35 percent permanent impairment of her left lower extremity due to left knee and left ankle/foot deficits. In an October 2, 2015 addendum report, he indicated that, under Table 16-4 on page 514, her left hip arthritis fell under class 1 with a default value of seven percent permanent impairment of her left lower extremity. Appellant had a functional history grade modifier of 3, a physical examination grade modifier of 2, and a clinical studies grade modifier of 1. Dr. Adams noted that application of the net adjustment formula required movement to the space on Table 16-4 for nine percent permanent impairment of her left lower extremity due to left hip arthritis. He used the Combined Values Chart to combine the 35 percent permanent impairment rating of the left lower extremity due to left knee and ankle/foot deficits (described in his June 25, 2015 report) with the 9 percent

[21] In a May 15, 2017 report, Dr. Katz identified the prior, non-overlapping award for permanent impairment of the left lower extremity as being 34 percent. In this report, he also determined that appellant was entitled to an additional six percent award for permanent impairment of her left lower extremity.

permanent impairment rating of the left lower extremity due to left hip deficits. Dr. Adams concluded that appellant had 41 percent permanent impairment of her left lower extremity.

Secondly, the Board further finds that there also is a conflict in the medical opinion evidence between Dr. Katz and Dr. Adams regarding the extent of appellant's right lower extremity impairment which requires further development.

In a December 10, 2016 report, Dr. Katz indicated that, under Table 16-3 on page 509, the partial medial and lateral meniscectomies of appellant's right knee fell under class 1 with a default value of 10 percent permanent impairment of the right lower extremity. He noted that she had a functional history grade modifier of 1 and physical examination grade modifier of 1, and that the clinical studies grade modifier was not applicable. Dr. Katz indicated that application of the net adjustment formula did not require movement of from the default value under Table 16-3 which meant that appellant had 10 percent permanent impairment of her right lower extremity due to her right knee surgery.

In contrast, Dr. Adams found in his June 25, 2015 report that, under Table 16-3 on page 509, the partial medial and lateral meniscectomies of appellant's right knee fell under class 1 with a default value of 10 percent permanent impairment of her right lower extremity. Application of the net adjustment formula required movement two spaces to the right of the default value under Table 16-3 which meant that she had 13 percent permanent impairment of her right lower extremity due to her right knee surgery.

Consequently, the case must be referred to an impartial medical specialist to resolve the conflict in the medical opinion evidence between Dr. Katz and Dr. Adams regarding the permanent impairment of appellant's lower extremities. On remand OWCP should refer appellant, along with the case file and an updated statement of accepted facts, to an appropriate specialist for an impartial medical evaluation and report including a rationalized opinion on this matter. After carrying out this additional development, OWCP shall issue a *de novo* decision regarding her claim.

CONCLUSION

The Board finds that, due to a conflict in the medical opinion evidence, the case is not in posture for decision regarding whether appellant has met her burden of proof to establish more than 40 percent permanent impairment of her left lower extremity and 20 percent permanent impairment of her right lower extremity, for which she previously received schedule award compensation. The case is remanded to OWCP for further development.

ORDER

IT IS HEREBY ORDERED THAT the May 23 and 22, 2017 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded to OWCP for further action consistent with this decision.

Issued: September 19, 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