

ISSUE

The issue is whether appellant has met her burden of proof to establish more than two percent permanent impairment of the right lower extremity, for which she previously received a schedule award.

FACTUAL HISTORY

On April 10, 2014 appellant, then a 45-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on February 26, 2014, she fractured her right hip bone when she slipped and fell on a curb that was covered with ice and snow while in the performance of duty. She stopped work on April 3, 2014 and returned to full-duty work on October 17, 2015. OWCP accepted appellant's claim for a stress fracture of the right.

On June 8, 2016 appellant filed a claim for a schedule award (Form CA-7).

By development letter dated June 20, 2016, OWCP advised appellant that the medical evidence was insufficient to support a schedule award claim because it did not establish a permanent impairment of a scheduled member or function of the body. It advised her of the requirements to support a claim for a schedule award and afforded her 30 days to submit the necessary evidence.

In an October 11, 2016 report, Dr. Catherine Watkins Campbell, Board-certified in occupational and family medicine, noted appellant's history of injury and treatment. She referenced the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*)³ and provided examination findings. Dr. Watkins Campbell noted three separate active range of motion (ROM) measurements for appellant's right hip. Based upon appellant's ROM measurements, she calculated that appellant had 0 percent loss of abduction, 5 percent loss of adduction, 10 percent loss of flexion, 5 percent loss of extension, 5 percent loss of internal rotation, and 0 percent loss of external rotation. Dr. Watkins Campbell opined that utilizing the ROM methodology for rating permanent impairment, appellant had 25 percent permanent impairment, multiplied by 5 percent, for Grade 1 functional issues which increased the total to 26 percent permanent impairment of the right lower extremity.

Dr. Watkins Campbell explained that an x-ray of the right hip and pelvis revealed no remaining evidence of a hip or pubic rami fracture. She also determined that appellant's joint space was within normal limits for age. Dr. Watkins Campbell explained that there was no diagnostic lower extremity category of diagnosis that covered the accepted condition.

On October 28, 2016 OWCP requested that Dr. Jovito Estaris, Board-certified in occupational medicine, an OWCP district medical adviser (DMA) review Dr. Watkins Campbell's report and provide an impairment rating.

In a November 5, 2016 report, Dr. Estaris noted appellant's history of injury and treatment. He reviewed Dr. Watkins Campbell's report and explained that she has assigned 26 percent

³ A.M.A., *Guides* (6th ed. 2009).

permanent impairment based upon the ROM methodology. The DMA explained that while Dr. Watkins Campbell used the ROM methodology to rate appellant's permanent impairment, there was a diagnosis-based impairment (DBI) grid for a fracture of pubic rami, which was the acceptable method for rating the accepted condition, Table 17-11.⁴ He advised that in the DBI grid, there was no asterisk, which meant that the ROM method of impairment was not recommended. The DMA explained that the ROM method could be used as a physical examination adjustment factor, but for the pelvis, the physical examination adjustment did not include a ROM deficit.

In calculating appellant's permanent impairment, the DMA referenced Table 17-11⁵ and explained that for a fracture of the pelvic rami, appellant fell into a Class 1, with a default value of 2, for a nondisplaced fracture, healed and stable. He provided adjustments of a grade modifier for functional history (GMFH) of 1 for pain and noted that the McGill pain questionnaire revealed a moderate tendency for symptom amplification⁶. The DMA determined a grade modifier for physical examination (GMPE) of 1 for a tender groin while performing activities.⁷ He advised that the grade modifier clinical studies (GMCS) was not used in the adjustment as it had been used in the diagnosis and classification in the DBI grid. The DMA utilized the net adjustment formula $(GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX) = (1-1) + (1-1) = 0$ and found no net adjustment.⁸ He concluded that appellant had two percent permanent impairment of the pelvis.

By letter dated March 31, 2017, OWCP requested that Dr. Watkins Campbell review the DMA's findings. In a June 13, 2017 response, counsel noted that a rating of permanent impairment based upon ROM methodology was allowed. He asserted that "Dr. Campbell is right and the DMA is incorrect."

On July 5, 2017 OWCP requested a follow-up response from the DMA.

The DMA provided clarification on July 9, 2017. He explained that there was a separate DBI grid for the pelvis and it was the proper grid to be utilized, since the diagnosis was right pelvic fracture. The DMA referred to Section 17.1, Principles of Assessment for Spine and Pelvis.⁹ He noted that in the first column, the 4th paragraph: "Impairment values for the spine and pelvis are calculated using the DBI method. Impairment class is determined by the diagnosis and specific criteria that are considered the key factor and then adjusted by grade modifiers or nonkey factors." The DMA further indicated that there was "no mention of the use of ROM as an alternative for Impairment rating of Spine and Pelvis." He referred to Section 15.2 at page 387 and Section 16.2 at page 497 of the A.M.A., *Guides* and explained that at page 387, it was advised that the ROM method was primarily used as a physical examination adjustment factor and was only used to

⁴ A.M.A., *Guides* 593.

⁵ *Id.*

⁶ *Id.* at 594.

⁷ *Id.* at 595.

⁸ *Id.* at 521.

⁹ *Id.* at 559.

determine actual impairment values when it was “NOT possible to otherwise define impairment.” The DMA reiterated that, with regard to the spine and pelvis, “the only recommended method of impairment rating is the DBI method.” He again concluded that appellant had two percent permanent impairment of the right lower extremity. The DMA noted that July 13, 2016, the date of Dr. Watkins Campbell’s report, was the date of maximum medical improvement.

By decision dated September 15, 2017, OWCP granted appellant a schedule award for two percent permanent impairment of the right lower extremity. The period of the award ran from July 13 to August 22, 2016, for a total of 5.76 weeks of compensation.

By letter dated September 27, 2017, appellant, through counsel, requested a telephonic hearing, which was held on March 7, 2018.

In a January 24, 2018 report, Dr. Watkins Campbell noted that she would not change her 26 percent permanent impairment rating for appellant’s right pelvic fracture. She explained that the hip was a part of the pelvis, therefore appellant’s ROM had been properly assessed. Dr. Watkins Campbell opined that “unless OWCP can document inconsistent ROM deficits closer to the time of maximum medical improvement on April 26, 2016, an argument about inconsistency in [ROM] is not felt to be valid.”

By decision dated April 12, 2018, OWCP’s hearing representative affirmed the September 15, 2017 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA,¹⁰ and its implementing federal 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.¹² For decisions issued after May 1, 2009, the sixth edition will be used.¹³

¹⁰ 5 U.S.C. § 8107.

¹¹ 20 C.F.R. § 10.404.

¹² *Id.* at § 10.404(a).

¹³ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

In addressing lower extremity impairments, the sixth edition requires identifying the impairment class of diagnosis (CDX) condition, which is then adjusted by GMFH, GMPE, and GMCS.¹⁴ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹⁵

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the percentage of permanent impairment using the A.M.A., *Guides*.¹⁶

ANALYSIS

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

In support of her claim, appellant submitted an October 11, 2016 report from Dr. Watkins Campbell, who opined that she had 26 percent right lower extremity permanent impairment utilizing the ROM method for rating permanent impairment. However, she has not provided rationale, supported by the A.M.A., *Guides*, to establish that the ROM method should be used to rate permanent impairment of the pelvis. Thus, the Board finds that Dr. Watkins Campbell's report was not based upon a correct application of the A.M.A., *Guides*.¹⁷

Dr. Estaris, the DMA, explained why the ROM method could not be used to evaluate appellant's pelvis fracture. He referred to the appropriate tables and sections under the A.M.A., *Guides*. Dr. Estaris explained that with regard to the spine and pelvis, "the only recommended method of impairment rating is the DBI method." Furthermore, he advised that the nonkey modifier for physical examination at Table 17-13 did not have criteria for a deficit of range of motion of the lower extremity.¹⁸

The Board finds that the DMA properly referred to the appropriate sections of the A.M.A., *Guides* when providing his impairment rating. The DMA referred to Table 17-11, the DBI Grid for the pelvis¹⁹ and explained that appellant had a class of diagnosis of 1, with a default value of 2, for a nondisplaced fracture, healed and stable. He noted a GMFH of 1, GMPE of 1, and he explained that GMCS had not been used in the adjustment because it was used in diagnosis and

¹⁴ A.M.A., *Guides* 494-531; *see D.S.*, Docket No. 17-0419 (issued August 8, 2018).

¹⁵ A.M.A., *Guides* 521.

¹⁶ *B.B.*, Docket No. 18-0782 (issued January 11, 2019).

¹⁷ An opinion which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment. *I.F.*, Docket No. 08-2321 (issued May 21, 2009).

¹⁸ A.M.A., *Guides* 595.

¹⁹ *Id.* at 593.

classification in the DBI grid.²⁰ The DMA utilized the net adjustment formula and found no net adjustment.²¹ He concluded that appellant had two percent permanent impairment of the right lower extremity.

The Board finds that there is no evidence of record, which establishes greater permanent impairment than the two percent previously awarded.

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 her burden of proof to establish greater than two percent permanent impairment of her right lower extremity for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2019
Washington, DC

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

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

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

²⁰ *Supra* note 18.

²¹ *Id.* at 521.