



when she tripped and fell on concrete as she avoided a lunging dog while in the performance of duty. OWCP initially accepted the claim for contusions of her right elbow and forearm and bilateral contusions of her knees and lower legs. It later expanded the claim to include a tear of the left medial meniscus. OWCP authorized left knee surgery, which was performed on December 10, 2009, and placed appellant on the periodic rolls effective January 17, 2010. Appellant returned to work on March 8, 2010.

In a September 29, 2015 report, Dr. Robert S. Bell, a Board-certified orthopedic surgeon, opined that appellant, that day, was at maximum medical improvement (MMI) and had four percent permanent impairment of the left lower extremity based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup> He found on physical examination that there was a very slight amount of weakness of the left knee, full flexion, full extension, negative McMurray's testing, and no effusion. Dr. Bell also noted that x-rays of both knees showed no evidence of changes or degenerative issues. He calculated that appellant had two percent permanent impairment of the left lower extremity finding a class of diagnosis (CDX) of 1 with a default impairment rating of two percent. Dr. Bell assigned a grade modifier of 2 for physical examination (GMPE), zero for clinical studies (GMCS), and zero for functional history (GMFH), equaling a net adjustment of +2, equating to four percent permanent impairment of the left lower extremity.<sup>3</sup>

Appellant filed a schedule award claim (Form CA-7) on October 18, 2016.

On June 12, 2017 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), reviewed a statement of accepted facts (SOAF) and the medical evidence of record and determined that appellant's date of MMI was September 29, 2015, the date of Dr. Bell's impairment examination. He disagreed with the diagnosis Dr. Bell had used for calculating appellant's permanent impairment rating, explaining that she had sustained impairment for having undergone a partial medial meniscectomy. Utilizing Table 16-3, page 509, of the A.M.A., *Guides*, the DMA determined that appellant had two percent permanent impairment of the left lower extremity based upon the diagnosis-based impairment (DBI) method. He noted that the range of motion (ROM) method was not an allowable rating method for the assigned diagnosis.

In a letter dated June 20, 2017, OWCP requested a supplemental report from Dr. Bell regarding his permanent impairment rating and attached a copy of Dr. Harris' June 12, 2017 report for his review. It did not receive a response from Dr. Bell.

As Dr. Bell did not respond, OWCP referred appellant to Dr. James E. Butler, III, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her permanent impairment for her accepted employment-related conditions. In his October 27, 2017 report, Dr. Butler reviewed the SOAF and the medical evidence of record and reported the findings of his physical examination. He found that appellant was status post left knee arthroscopic partial medial meniscectomy and continued to have some chronic pain, but that her symptoms were stable. Dr. Butler determined that appellant had reached MMI on October 27, 2017, the date

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>3</sup> Dr. Bell cited to page 526 of the A.M.A., *Guides*.

of his examination. He reported that appellant's subjective complaints included aching pain in her left knee with prolonged standing/walking and heavy pushing. The objective findings upon examination included well-healed arthroscopic scars on the left knee, tenderness over left knee patellar region, nontender right knee and right elbow, full ROM of both knees and right elbow, mild left knee patellofemoral crepitation, normal sensation in both lower extremities, and 5/5 strength in both lower extremities. Utilizing Table 16-3, page 506, of the A.M.A., *Guides*, Dr. Butler calculated that appellant had a CDX of 1 for left knee contusion/medial meniscus tear status post partial medial meniscectomy. He assigned a GMFH of 1 and zero for both GMPE and GMCS based on Table 16-6, Table 16-7, and Table 16-8 of the A.M.A., *Guides*. Using the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), Dr. Butler calculated that appellant had a net adjustment of (1-1) + (1-1) + (0-1) = -1, equaling a grade B impairment. Based on these calculations, he concluded that appellant had two percent permanent impairment of her left lower extremity. Dr. Butler further found that appellant had zero percent impairment of the right lower extremity and the right upper extremity because there were no significant objective symptoms or abnormal findings on examination.

On December 22, 2017 the DMA concurred with Dr. Butler's impairment rating of two percent permanent impairment left lower extremity. He determined that appellant had reached MMI as of October 27, 2017, the date of Dr. Butler's second opinion evaluation.

By decision dated January 30, 2018, OWCP granted appellant a schedule award for two percent permanent impairment of the left lower extremity (left knee), giving the weight of the medical evidence to Dr. Butler's October 27, 2017 report and the DMA's December 22, 2017 report. The award ran for 5.76 weeks for the period October 27 to December 6, 2017.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>4</sup> and its implementing federal regulations,<sup>5</sup> 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.<sup>6</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>7</sup>

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.* at § 10.404(a).

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

With respect to the knee, the relevant portion of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.<sup>8</sup> After the CDX is determined from the Knee Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>9</sup> Under Chapter 2.3, the evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.<sup>10</sup>

### ANALYSIS

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

In his September 29, 2015 report, Dr. Bell opined that appellant had four percent permanent impairment of the left lower extremity based on the A.M.A., *Guides*. He determined that appellant had reached MMI and calculated that she had two percent permanent impairment of the left lower extremity based upon a CDX of 1, with a default impairment of two percent. Dr. Bell assigned a GMPE of 2 and zero for both GMCS and GMFH, equaling a net adjustment of +2, equating to a total four percent permanent impairment of the left lower extremity.

In accordance with its procedures, OWCP properly referred the medical record to a DMA, Dr. Harris, who reviewed the clinical findings of Dr. Bell on September 29, 2015 and determined that appellant had two percent permanent impairment of the left lower extremity based upon Dr. Bell's objective findings. However, the DMA disagreed with Dr. Bell's impairment rating and explained that appellant's permanent impairment was based upon having undergone a partial medial meniscectomy. Utilizing Table 16-3, page 509, of the A.M.A., *Guides*, he determined that appellant had two percent permanent impairment of the left lower extremity.

After Dr. Bell did not respond to a request for a supplemental report, OWCP referred appellant to Dr. Butler for a second opinion evaluation to determine the nature and extent of her permanent impairment for the accepted employment-related conditions. In his October 27, 2017 report, Dr. Butler found that appellant was status post left knee arthroscopic partial medial meniscectomy and continued to have some chronic pain, but with stable symptoms. He determined that appellant had reached MMI and reported that her subjective complaints, included aching pain in her left knee with prolonged standing/walking and heavy pushing. Dr. Butler provided objective examination findings upon which he based his impairment rating. Utilizing Table 16-3, page 506, of the A.M.A., *Guides*, he calculated that appellant had a CDX of 1 for a left knee contusion/medial meniscus tear status post partial medial meniscectomy. Dr. Butler assigned grade modifiers based on Table 16-6, Table 16-7, and Table 16-8 of the A.M.A., *Guides*. Using the net adjustment formula, he calculated a net adjustment of -1, equaling a grade B impairment. Based on these

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<sup>8</sup> See A.M.A., *Guides* 509-11 (6<sup>th</sup> ed. 2009).

<sup>9</sup> *Id.* at 515-22.

<sup>10</sup> *Id.* at 23-28.

calculations, Dr. Butler concluded that appellant had two percent permanent impairment of the left lower extremity.

On December 22, 2017 the DMA reviewed the medical record and concurred with Dr. Butler's impairment rating of two percent permanent impairment left lower extremity. He discussed how Dr. Butler had arrived at his impairment ratings by listing specific tables and pages in the A.M.A., *Guides* and he also properly interpreted the sixth edition of the A.M.A., *Guides* to find that appellant had two percent permanent impairment of the left lower extremity. The Board finds that the DMA properly applied the standards of the A.M.A., *Guides* and therefore his opinion carries the weight of medical evidence and supports that appellant does not have greater than the two percent left lower extremity impairment previously awarded.

The Board finds that there is no current medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing greater than two percent permanent impairment of the left lower extremity. Accordingly, appellant has not met her burden of proof to establish entitlement to a schedule award greater than that 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 more than two percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 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