United States Department of Labor
Employees' Compensation Appeals Board

R.F., Appellant	)	
and	)	**Docket No. 19-0778**
	)	**Issued: September 18, 2019**
U.S. POSTAL SERVICE, PROCESSING & DISTRUBUTION CENTER, Oakland, CA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On February 25, 2019 appellant filed a timely appeal from a February 4, 2019 merit decision of the Office of Workers' Compensation Programs. 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]

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish greater than two percent permanent impairment of the left upper extremity, for which he previously received

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the February 4, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

schedule award compensation; and (2) whether he has met his burden of proof to establish greater than seven percent permanent impairment of the left lower extremity, for which he previously received schedule award compensation.

FACTUAL HISTORY

On October 29, 2014 appellant, then a 70-year-old distribution operations supervisor, filed a traumatic injury claim (Form CA-1) alleging that on October 23, 2014 he injured his left hand and fractured his left knee when he tripped and fell while in the performance of duty. He stopped work on October 24, 2014 and returned to modified employment on May 23, 2015. OWCP accepted the claim for a closed fracture of the left patella and a closed fracture of the left carpal bone. It subsequently expanded acceptance of the claim to include a sprain of the carpal joint of the left wrist.

On October 24, 2014 appellant underwent an open reduction and internal fixation of a comminuted left patella fracture.

Appellant retired from the employing establishment on February 28, 2017.

On July 31, 2017 appellant underwent a proximal carpal synovectomy, debridement of the triangular fibroid cartilage complex, and debridement of the scapholunate interosseous ligament.

In an impairment rating report dated February 28, 2018, Dr. Michael E. Hebrard, a Board-certified physiatrist, measured range of motion (ROM) of appellant's wrists, knees, and ankles. He found paresthesia of the left ulnar and medial nerve distribution and the left lateral aspect. Dr. Hebrard further found strength of 4/5 for the left wrist and 4/5 for the left knee, mild left knee laxity, a positive left wrist Finkelstein's test, a positive left patella compression test, and a mildly antalgic gait on the left. Referencing Table 15-3 on page 395 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[3] he identified the class of diagnosis (CDX) as a class 1 left wrist sprain, which yielded a default value of one percent. Dr. Hebrard applied grade modifiers of two for functional history (GMFH) based on appellant's *Quick*DASH (disabilities of the arm, shoulder, and hand) score of 80 and found that a grade modifier for clinical studies (GMCS) was not applicable. He found a net adjustment of two after applying the grade modifiers and the two percent permanent impairment of the left wrist.

For the left knee, Dr. Hebrard identified a CDX of 1 displaced comminuted fracture the left patella using Table 16-3 on page 510. He found no grade modifier adjustments from the default value of seven percent.

On September 13, 2018 appellant filed a claim for a schedule award (Form CA-7).

On October 10, 2018 Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), reviewed the medical evidence and concurred with Dr. Hebrard's finding of two percent left upper extremity impairment using the DBI method. He advised that he was unable to rate his impairment using the ROM method as Dr. Hebrard had failed to provide

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

three separate ROM measurements. For the left lower extremity, Dr. Fellars identified the CDX as a class 1 comminuted patella fracture, with a default value of seven percent. Dr. Fellars applied a GMFH of one for his antalgic limp, a grade modifier for physical examination (GMPE) of one due to reduced motion, and a GMCS of one, which yielded no adjustment from the default value after applying the net adjustment formula. He found that appellant had obtained maximum medical improvement on February 28, 2018. Dr. Fellars concluded that he had two percent permanent impairment of the left upper extremity and seven percent permanent impairment of the right upper extremity.

By decision dated February 4, 2019, OWCP granted appellant a schedule award for two percent permanent impairment of the left upper extremity and seven percent permanent impairment of the left lower extremity. The period of the award ran for 26.4 weeks from February 28 to August 31, 2018.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA,[4] and its implementing federal regulation,[5] 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. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.[6] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[7]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning Disability and Health (ICF).[8] Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by grade modifiers based on GMFH, GMPE, and GMCS.[9] The net adjustment

[4] *Supra* note 2.

[5] 20 C.F.R. § 10.404.

[6] For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6 (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[7] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[8] A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3, International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[9] *Id*. at 494-531.

formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[10] Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[11]

The A.M.A., *Guides* also provide that the ROM impairment method is to be used as a stand-alone rating for upper extremity impairments when other grids direct its use or when no other diagnosis-based sections are applicable.[12] If ROM is used as a stand-alone approach, the total of motion impairment for all units of function must be calculated. All values for the joint are measured and added.[13] Adjustments for functional history may be made if the evaluator determines that the resulting impairment does not adequately reflect functional loss and functional reports are determined to be reliable.[14]

Regarding the application of ROM or DBI methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides:

> "As the [A.M.A.,] *Guides* caution that if it is clear to the evaluator evaluating loss of ROM that a restricted ROM has an organic basis, three independent measurements should be obtained and the greatest ROM should be used for the determination of impairment, the CE [claims examiner] should provide this information (via the updated instructions noted above) to the rating physician(s)."
>
> "Upon initial review of a referral for upper extremity impairment evaluation, the DMA should identify: (1) the methodology used by the rating physician (*i.e*., DBI or ROM) and (2) whether the applicable tables in Chapter 15 of the [A.M.A.,] *Guides* identify a diagnosis that can alternatively be rated by ROM. *If the [A.M.A.,] Guides allow for the use of both the DBI and ROM methods to calculate an impairment rating for the diagnosis in question, the method producing the higher rating should be used.*"[15] (Emphasis in the original.)

ANALYSIS -- ISSUE 1

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

In a February 28, 2018 impairment evaluation, Dr. Hebrard found that appellant had 4/5 strength and a positive Finkelstein's test of the left wrist. He measured ROM for the left wrist. Dr. Hebrard found that appellant had two percent permanent impairment of the left upper extremity

[10] *Id*. at 411.

[11] *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

[12] A.M.A., *Guides* 461.

[13] *Id*. at 473.

[14] *Id*. at 474.

[15] FECA Bulletin No. 17-06 (May 8, 2018); *V.L.*, Docket No. 18-0760 (issued November 13, 2018).

due to a class 1 left wrist sprain using the DBI method set forth at Table 15-3 on page 395 of the A.M.A., *Guides*.

On October 10, 2018 Dr. Fellars, a DMA, reviewed Dr. Hebrard's findings and concurred with his determination that appellant had two percent permanent impairment of the left upper extremity using the DBI method. He indicated that he could not rate his impairment using the ROM method as Dr. Hebrard had failed to obtain three separate ROM measurements, as required by the A.M.A., *Guides*.[16]

As noted, FECA Bulletin No. 17-06 indicates that in measuring ROM, the evaluator should obtain three independent measurements and use the greatest measurement to determine the extent of impairment.[17] The record fails to establish that Dr. Hebrard measured the ROM of appellant's left wrist three times prior to rating the extent of his permanent impairment. It was incumbent upon the DMA to obtain the necessary ROM measurements to complete the full rating.[18]

The Board finds that, consequently, as OWCP failed to follow the procedures outlined in FECA Bulletin No. No. 17-06, the case must be remanded.[19] On remand, OWCP should further develop the claim to obtain three independent ROM measurements as required under FECA Bulletin 17-06. Following this and other such development as deemed necessary, it shall issue a *de novo* decision.[20]

LEGAL PRECEDENT -- ISSUE 2

The schedule award provision of FECA,[21] and its implementing federal regulation,[22] 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. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the

[16] A.M.A., *Guides* 464.

[17] FECA Bulletin No. 17-06 (issued May 8, 2017); *see also J.V.*, Docket No. 18-1052 (issued November 8, 2018).

[18] *See M.D.*, Docket No. 18-1703 (issued January 18, 2019) (finding that a DMA should advise as to the medical evidence necessary to complete the ROM method of rating if the medical evidence of record is insufficient to rate appellant's impairment using loss of ROM).

[19] *R.A.*, Docket No. 18-1331 (issued April 24, 2019); *F.V.*, Docket No. 18-0427 (issued November 9, 2018).

[20] *J.F.*, Docket No. 17-1726 (issued March 12, 2018).

[21] *Supra* note 2.

[22] 20 C.F.R. § 10.404.

specified edition of the A.M.A., *Guides*, published in 2009.[23] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[24]

In determining impairment for the lower extremities, 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 leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.[25] After the CDX is determined from the Knee Regional Grid (including identification of a default grade value), the net adjustment formula is applied using GMPH, GMPE, and GMCS. The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[26] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[27]

ANALYSIS -- ISSUE 2

The Board finds that appellant has no more than seven percent permanent impairment of the left lower extremity, for which he previously received schedule award compensation.

On February 28, 2018 Dr. Hebrard found paresthesia in the left leg at the lateral aspect, 4/5 strength of the left knee, a positive compression test of the left patella, and a mild antalgic gait on the left side. He identified the CDX as a class 1 displaced comminuted fracture the left patella using Table 16-3 on page 510 and found no adjustments from the default value of seven percent.

In a report dated October 10, 2018, Dr. Fellars reviewed Dr. Hebrard's impairment rating. He identified the CDX as a class 1 comminuted patella fracture using Table 16-3, for a default value of seven percent. Dr. Fellars applied GMFH, GMPE, and GMCS of one, which yielded no adjustment from the default value after applying the net adjustment formula.[28] The record contains no other probative, rationalized medical opinion establishing that appellant has greater impairment of the left lower extremity based upon the A.M.A., *Guides*, and thus he has not met his burden of proof to establish greater than seven percent permanent impairment, for which he received schedule award compensation.[29]

[23] For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6 (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[24] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[25] *Id*. at 509-11.

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

[27] *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

[28] The net adjustment formula, (GMFH-CDX) + (GMPE-CDX) + (GMCS–CDX), or (1-1) + (1-1) + (1-1) = 0, yielded no adjustment.

[29] *See J.H.*, Docket No. 18-1207 (issued June 20, 2019).

On appeal appellant asserts that he disagrees with the impairment rating and describes his pain and limitations due to his patellar fracture.[30] He has the burden of proof, however, to submit medical evidence in accordance with the A.M.A., *Guides* establishing greater permanent impairment of the left lower extremity.[31]

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 the case is not in posture for decision regarding the extent of appellant's permanent impairment of the left upper extremity. The Board further finds that appellant has no more than seven percent permanent impairment of the left lower extremity for which he received schedule award compensation.

[30] Appellant also maintains that he required a bed with an adjustable base and a scooter. That issue, however, is not presently before the Board as the Board's jurisdiction is limited to reviewing final adverse decisions issued by OWCP within 180 days from the date of the docketing of the current appeal. 20 C.F.R. §§ 501.2(c), 501.3(a) & (e); *see N.M.*, Docket No. 18-1244 (issued March 4, 2019).

[31] *See R.R.*, Docket No. 17-1864 (issued March 1, 2018).

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 18, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board