United States Department of Labor
Employees' Compensation Appeals Board

T.F., Appellant	)	
and	)	**Docket No. 19-0157**
	)	**Issued: April 21, 2020**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Las Vegas, NV, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 29, 2018 appellant filed a timely appeal from an August 30, 2018 merit decision 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish permanent impairment of her right lower extremity, warranting a schedule award.

FACTUAL HISTORY

On October 4, 2009 appellant, then a 38-year-old transportation security officer (screener), filed a traumatic injury claim (Form CA-1) alleging that on September 28, 2009 she injured her

[1] 5 U.S.C. § 8101 *et seq*.

right knee moving luggage while in the performance of duty. OWCP accepted the claim for sprain of the right knee and leg. It subsequently expanded acceptance of the claim to include a temporary aggravation of preexisting right knee patellar chondromalacia. On September 22, 2010 appellant underwent an authorized right knee arthroscopy and removal of a loose body and chondroplasty of the trochlea and medial femoral condyle.

On January 24, 2011 appellant filed a claim for a schedule award (Form CA-7).[2]

By decision dated July 27, 2011, OWCP denied appellant's claim for a schedule award as the medical evidence then of record failed to establish that her condition was at maximum medical improvement (MMI). By decision dated December 20, 2011, an OWCP hearing representative affirmed the July 27, 2011 decision.

On May 15, 2014 appellant again filed a claim for a schedule award (Form CA-7).

On June 5, 2014 OWCP requested that Dr. Robert W. Patti, an attending Board-certified orthopedic surgeon, address whether appellant had reached MMI and provide an impairment rating for her accepted conditions utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[3].

In a July 1, 2014 response, Dr. Patti advised that he was unable to perform an impairment rating for permanent partial disability as he was not a rating physician.[4]

By decision dated February 19, 2015, OWCP denied appellant's claim for a schedule award, finding that she had not submitted any medical evidence supporting that she had sustained a permanent measurable impairment of a scheduled member or function.

On August 25, 2017 OWCP referred appellant to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, for a second opinion examination regarding her current condition and the extent of her permanent impairment, if any, due to her accepted right knee conditions.

In a report dated September 19, 2017, Dr. Swartz discussed appellant's history of injury and reviewed the medical evidence of record. He noted that he had previously evaluated her on February 22, 2010 and had recommended surgery, which had been performed on September 22, 2010. On examination, Dr. Swartz found crepitus of the knees, more on the right, no instability, lateral tenderness in the left knee with only slight tenderness of the right knee, and full strength of the knees. He measured range of motion (ROM) of the right knee from 0 to 130 degrees and in the left knee from 0 to 120 degrees. Dr. Swartz diagnosed status post right knee contusion, noting that surgery had demonstrated a loose body, chondromalacia, degenerative

[2] Appellant again submitted schedule award claims (Form CA-7) on April 3 and May 11, 2011. On February 21, 2011 she returned to modified employment.

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

[4] In a report dated August 22, 2013, Dr. Patti advised that appellant's only right knee complaint was minor crepitus and aching. On examination, he found a normal gait with good alignment and superb bilateral strength. Dr. Patti further found no effusion, good stability, full flexion and extension, and no joint line tenderness. He diagnosed a resolved right knee condition and opined that appellant could perform her usual employment.

arthritis, synovitis, and bone-to-bone arthritis of the patella. He opined that appellant had continued residuals of her employment injury due to a permanent aggravation of preexisting patellar chondromalacia and arthritis in the femoral condyle and trochlea. Dr. Swartz indicated that he would need to reevaluate appellant prior to determining an impairment rating to perform three ROM joint measurements and obtain standing x-rays of the knees.

In a supplemental report dated October 24, 2017, Dr. Swartz measured ROM for the knees three times, obtaining a maximum right knee measurement of 0 to 140 degrees and left knee measurement of 0 to 120 degrees. Referring to x-rays of the knees, he noted a 3 millimeter (mm) cartilage interval for the patellofemoral compartment, a 4.4 mm cartilage interval for the medial compartment, and a 5.5 mm interval for the lateral compartment. Dr. Swartz opined that appellant had no ratable impairment for the patellofemoral compartment. He further observed that she stood and squatted well with both knees, walked without a limp, had no right lower extremity atrophy, and only slight tenderness of the right knee with crepitus. Dr. Swartz opined that appellant had no ratable impairment using either the ROM method or based on loss of cartilage interval.

In a report dated December 4, 2017, Dr. Arthur Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), opined that appellant did not have a ratable impairment of the right knee using the diagnosis-based impairment (DBI) method of the A.M.A., *Guides*. He noted that Dr. Swartz had not found significant joint space narrowing based on x-rays of the right knee. The DMA further indicated that the A.M.A., *Guides* did not allow for impairment ratings to be calculated using the ROM methodology as there was no asterisk next to the diagnosis in the applicable regional grid.

By decision dated December 22, 2017, OWCP denied appellant's claim for a schedule award finding that the medical evidence of record did not demonstrate a measureable impairment of the right knee.

On January 3, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Thereafter, appellant submitted a statement dated December 31, 2017, asserting that the ROM measurements obtained of her right knee were flawed and that she continued to have residuals of her injury.

A telephonic hearing was held on June 15, 2018. OWCP's hearing representative advised appellant that she could submit medical evidence from her treating physician addressing Dr. Swartz's impairment rating. She held the record open for 30 days for the submission of additional evidence. No additional evidence was received.

By decision dated August 30, 2018, OWCP's hearing representative affirmed the December 22, 2017 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA[5] and its implementing regulations[6] 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. OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants. As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[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 class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS).[9] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[10] OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish permanent impairment of her right lower extremity, warranting a schedule award.

Appellant's treating physician, Dr. Patti, advised that he did not provide impairment ratings. Consequently, OWCP referred her to Dr. Swartz to determine the extent of permanent impairment of the right lower extremity, if any, causally related to her accepted employment injury.

On September 19, 2017 Dr. Swartz found that appellant had full strength of the knees with no instability, a good gait, and the ability to squat well bilaterally. He found some crepitus in both knees, more on the right, and slight lateral right knee tenderness. Dr. Swartz diagnosed a

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

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

[8] *Supra* note 3 at page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[9] *Id*. at 494-531

[10] *Id*. at 411.

[11] *See supra* note 7 at Chapter 2.808.6(f) (March 2017).

permanent aggravation of preexisting patellar chondromalacia and arthritis in the femoral condyle and trochlea due to appellant's employment injury.[12]

In an October 24, 2017 addendum, Dr. Swartz measured ROM of the knees three times, with a maximum measurements of 0 to 140 degrees on the right and 0 to 120 degrees on the left. He opined that appellant had no ratable impairment using either the ROM method or the DBI method based on cartilage interval.

In accordance with its procedures, OWCP routed the case record to Dr. Harris, a DMA, who reviewed the evidence of record. The DMA diagnosed status post right knee arthroscopic removal of a loss body and chondroplasty. He noted that an x-ray obtained on October 23, 2017 had revealed patellofemoral joint degenerative changes and calcific tendinopathy, and that Dr. Swartz had reviewed the x-rays and found no "significant joint space narrowing." The DMA opined that appellant had no impairment using the DBI method.[13] He further correctly noted that the A.M.A., *Guides* did not allow the ROM method to be used as an alternative impairment method as there was no asterisk next to the diagnosis in the DBI knee regional grid.[14]

The Board finds that the DMA properly applied the A.M.A., *Guides* to rate appellant's right knee permanent impairment based on the findings in Dr. Swartz's report.[15] There is no probative medical evidence of record demonstrating a ratable permanent impairment.[16]

On appeal appellant asserts that her treating physicians did not perform impairment ratings. As noted, however, she has the burden to submit current medical evidence in conformance with the A.M.A., *Guides* to support permanent impairment.[17] As such evidence has not been submitted, appellant has not met her burden of proof.[18]

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.

[12] The Board notes that OWCP accepted appellant's claim for a sprain of the right knee and leg and a temporary aggravation of preexisting right knee patellofemoral chondromalacia. Upon return to the case record, it should consider whether the acceptance of her claim should be expanded to include the conditions found by Dr. Swartz, its referral physician, as employment related.

[13] *Supra* note 3 at 511, Table 16-3.

[14] *Id.*; *see also A.R.*, Docket No. 19-0250 (issued May 6, 2019).

[15] *See K.J.*, Docket No. 19-0901 (issued December 6, 2019).

[16] *See T.H.*, Docket No. 19-1066 (issued January 29, 2020); *F.E.*, Docket No. 17-0584 (issued December 18, 2017).

[17] *J.D.*, Docket No. 19-1207 (issued February 3, 2020).

[18] *See J.S.*, Docket No. 17-0714 (issued August 10, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish permanent impairment of her right lower extremity, warranting a schedule award.

ORDER

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

Issued: April 21, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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