

ISSUE

The issue is whether appellant has met his burden of proof to establish more than five percent permanent impairment of the right lower extremity, for which he previously received schedule award compensation.

FACTUAL HISTORY

On May 1, 2015 appellant, then a 64-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on April 27, 2015 he injured his right knee in a motor vehicle accident (MVA) while in the performance of duty. OWCP accepted the claim for a bucket handle tear of the right knee medial meniscus. It subsequently expanded acceptance of the claim to include an acute embolism and thrombosis of the right lower extremity. On October 6, 2016 appellant underwent a right partial medial meniscectomy, a patellar chondral debridement, a superior medial and lateral plica excision, and a lateral release. He stopped work on October 6, 2016 and received wage-loss compensation for temporary total disability. Appellant returned to work on March 1, 2017.

An April 7, 2017 magnetic resonance imaging (MRI) scan of the right knee revealed grade II to III chondromalacia patella, advanced chondromalacia of the anterior third of the lateral femoral condyle, a Baker's cyst, and presumed postoperative signal in the posterior horn of the medial meniscus.

In an impairment evaluation dated December 11, 2017, Dr. Ralph D'Auria, a Board-certified physiatrist, reviewed appellant's history of a right knee injury. He noted that appellant continued to experience right knee pain that increased with certain activities and right knee swelling and weakness with extended walking. On examination of the right knee, Dr. D'Auria measured flexion of 125 degrees with full extension. He found good stability and strength of the knee, but tenderness to palpation of the patella and medial and lateral compartments. Dr. D'Auria opined that appellant had a class 1 impairment of the right knee according to Table 16-3 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ He applied a grade modifier of three for functional history (GMFH), a grade modifier of two for physical examination (GMPE), and a grade modifier of two for clinical studies (GMCS) to find a net adjustment of one and an impairment rating of eight percent of the right lower extremity.

On March 1, 2018 appellant filed a claim for a schedule award (Form CA-7).

On March 28, 2018 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), found that Dr. D'Auria had failed to identify the diagnosis upon which he based his impairment rating. He diagnosed status post right knee medial meniscectomy, postoperative deep venous thrombosis of the right lower extremity, and patella chondromalacia of the right knee. Dr. Harris opined that appellant had five percent permanent impairment of the right lower extremity due to an osteochondral defect after a partial medial meniscectomy according to Table 16-3 on page 511 of the A.M.A., *Guides*. He noted that the A.M.A., *Guides* did not allow

⁴ A.M.A., *Guides* (6th ed. 2009).

an impairment rating due to loss of range of motion for the applicable diagnosis. Dr. Harris found that Dr. D'Auria's impairment rating exceeded the maximum allowed for the diagnosis of either an osteochondral defect or a partial medial meniscectomy, and thus disagreed with his conclusion. He opined that appellant had reached maximum medical improvement (MMI) on December 11, 2017.

By letter dated April 4, 2018, OWCP requested that Dr. D'Auria review the DMA's March 28, 2018 report and clarify his impairment rating.

In a report dated April 17, 2018, Dr. D'Auria advised that he had found that appellant had five percent permanent impairment of the right lower extremity using the diagnosis of an osteochondral defect and three percent permanent impairment of the right lower extremity using the diagnosis status post partial medial meniscectomy for a total right lower extremity impairment of eight percent. He disagreed with the DMA's finding that the evaluator could use only one diagnosis. Dr. D'Auria related that appellant's condition was "more accurately represented by adding these two impairments, for a total of [eight percent] of the lower extremity."

On May 2, 2018 Dr. Harris again reviewed the evidence and noted that the A.M.A., *Guides* instructed the evaluator to select and rate the most significant diagnosis using the diagnosis-based impairment (DBI) method.⁵ He advised that the most significant diagnosis was the osteochondral defect of the patella. Dr. Harris related that he had accounted for appellant's partial medial meniscectomy when applying grade modifiers. He opined that appellant had five percent permanent impairment of the right lower extremity.

By decision dated November 8, 2018, OWCP granted appellant a schedule award for five percent permanent impairment of the right lower extremity. The period of the award ran for 14.4 weeks from December 11, 2017 to a fraction of a day on March 21, 2018.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁶ and its implementing federal regulation,⁷ 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

⁵ A.M.A., *Guides* 499.

⁶ *Supra* note 2.

⁷ 20 C.F.R. § 10.404.

specified edition of the A.M.A., *Guides*, published in 2009.⁸ 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.⁹

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).¹⁰ Under the sixth edition, the evaluator identifies the impairment class of diagnosis (CDX), which is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE) and clinical studies (GMCS).¹¹ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).¹² Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹³

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.¹⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish more than five percent permanent impairment of the right lower extremity, for which he previously received schedule award compensation.

In a December 11, 2017 impairment evaluation, Dr. D'Auria opined that appellant had class 1 impairment of the right knee according to Table 16-3 of the A.M.A., *Guides*. He applied a GMFH of three, a GMPE of two, and a GMCS of two to find a net adjustment of one and an impairment rating of eight percent of the right lower extremity. Dr. D'Auria, however, failed to identify the diagnosis upon which he based his impairment rating and thus his opinion is of diminished probative value.¹⁵

⁸ 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).

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

¹⁰ 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.

¹¹ *Id.* at 494-531.

¹² *Id.* at 411.

¹³ *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹⁴ *See supra* note 6 at Chapter 2.808.6(f) (March 2017).

¹⁵ *See D.B.*, Docket No. 17-1526 (issued April 6, 2018).

In accordance with its procedures, OWCP properly referred the medical record to a DMA, Dr. Harris, who reviewed the clinical findings of Dr. D'Auria on March 28, 2018. Dr. Harris disagreed with his finding that appellant had eight percent permanent impairment of the right lower extremity as the rating exceeded the maximum allowed for the applicable right knee diagnoses of an osteochondral defect of the patella and a partial medial meniscectomy.

On April 17, 2018 Dr. D'Auria reviewed the DMA's report and advised that he had rated appellant using both the diagnoses of a partial medial meniscectomy and an osteochondral defect in finding an eight percent permanent impairment of the right lower extremity. He asserted that using both diagnoses was a more accurate method of assessing appellant's impairment. However, the A.M.A., *Guides* contemplate that only one diagnosis will be used.¹⁶ As Dr. D'Auria did not properly apply the A.M.A., *Guides*, his opinion is of limited probative value.¹⁷

In a report dated May 2, 2018, Dr. Harris found that appellant had five percent permanent impairment of the right lower extremity due to his osteochondral defect, the maximum allowed under Table 16-2 on page 511 for that diagnosis. He advised that the A.M.A., *Guides* instructed the evaluator to select the applicable diagnosis if more than one diagnosis can be used for a region. Dr. Harris noted that he had used the diagnosis of a partial medial meniscectomy in applying grade modifiers. The A.M.A., *Guides* provides, "If a patient has two significant diagnoses, for instance, ankle instability and posterior tibial tendinitis, the examiner should use the diagnosis with the highest impairment rating in that region that is causally related for the impairment calculation."¹⁸ Appellant's osteochondral defect yielded a higher impairment rating, and thus the DMA properly utilized that diagnosis in rating the extent of permanent impairment of the right knee.¹⁹

The Board finds that the weight of the medical evidence rests with the opinion of the DMA, as he provided the only impairment rating that properly applied the sixth edition of the A.M.A., *Guides*.²⁰ The DMA appropriately applied the A.M.A., *Guides* in determining that appellant had five percent permanent impairment of the right lower extremity.²¹ The record does not contain any other medical evidence establishing greater than five percent permanent impairment of the left lower extremity. Accordingly, appellant has not met his burden of proof to establish entitlement to a schedule award greater than that previously awarded.²²

¹⁶ See A.M.A., *Guides* 499 (if more than one diagnosis in a region can be used, the one that provides the most clinically accurate and causally related impairment should be used).

¹⁷ *D.M.*, Docket No. 16-1166 (issued October 25, 2016).

¹⁸ A.M.A., *Guides* 497.

¹⁹ *Id.*; see also *P.S.*, Docket No. 19-0486 (issued September 3, 2019).

²⁰ See *L.D.*, Docket No. 19-0797 (issued October 2, 2019).

²¹ *M.J.*, Docket No. 17-1776 (issued December 19, 2018); *M.C.*, Docket No. 15-1757 (issued March 17, 2016).

²² *T.W.*, Docket No. 18-0765 (issued September 20, 2019).

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 permanent impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish more than five percent permanent impairment of the right lower extremity, for which he previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2020
Washington, DC

Patricia H. Fitzgerald, Deputy 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