

**United States Department of Labor  
Employees' Compensation Appeals Board**

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J.D., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,  
WEST LOS ANGELES MEDICAL CENTER,  
Los Angeles, CA, Employer**

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**Docket No. 19-1207  
Issued: February 3, 2020**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

Before:

CHRISTOPHER J. GODFREY, Chief Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 10, 2019 appellant, through counsel, filed a timely appeal from a March 15, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish permanent impairment of the left lower extremity for schedule award purposes.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 25, 2015 appellant, then a 68-year-old health technician, filed a traumatic injury claim (Form CA-1) alleging that on August 24, 2015 she sustained a left knee injury when a confused patient pushed her and caused her to lose her balance while in the performance of duty.

In a report dated September 3, 2015, Dr. Ezequiel Suarez, an attending internist, diagnosed a left knee sprain with osteoarthritis. He returned appellant to full-time, full-duty work on September 14, 2015. In his report of that date, Dr. Suarez opined that her left knee condition had returned to baseline and released her from treatment.

On October 9, 2015 OWCP accepted appellant's claim for a sprain of the left knee.<sup>4</sup>

In a report dated July 27, 2017, Dr. Cachola diagnosed osteoarthritis of the left knee with joint pain. She opined that the accepted August 24, 2015 left knee injury had resolved. Dr. Cachola attributed appellant's symptoms to a worsening of underlying left knee osteoarthritis unrelated to her federal employment.

On June 20, 2018 appellant filed a claim for a schedule award (Form CA-7). In support of her claim, she submitted a February 9, 2018 report from Dr. Cachola noting crepitus of the left knee with hypertrophic changes to the medial and lateral joint lines. Dr. Cachola diagnosed osteoarthritis of the left knee and left knee joint pain. She opined that appellant's left knee pain was due to osteoarthritis, and was not "work related or a recurrence" of disability. In April 10, 2018 report, Dr. Cachola found that appellant was at maximum medical improvement (MMI) on September 14, 2015 the date Dr. Suarez released appellant from care.

In a development letter dated June 27, 2018, OWCP advised appellant of the deficiencies in the claim and of the additional evidence needed to meet her burden of proof. It explained that

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<sup>3</sup> Docket No. 18-1533 (issued February 27, 2019).

<sup>4</sup> On May 30, 2017 appellant filed a notice of recurrence (Form CA-2a) alleging that a series of left knee injections, ending in December 2016, had failed to relieve her symptoms. By decision dated September 14, 2017, OWCP denied her recurrence claim. Following a January 30, 2018 hearing before a representative of OWCP's Branch of Hearings and Review, appellant submitted a February 9, 2018 report from Dr. Kristine Enverga Cachola, specializing in occupational medicine and physiatrist, attributing appellant's left knee pain to osteoarthritis and age-related changes which were "not work related or a recurrence" of disability. By decision dated March 5, 2018, an OWCP hearing representative affirmed the prior decision. Appellant, through counsel, then appealed to the Board. By decision dated February 27, 2019, the Board affirmed OWCP's March 5, 2018 decision denying appellant's claimed May 30, 2017 recurrence of disability.

Dr. Cachola attributed her condition to idiopathic osteoarthritis and not the accepted left knee sprain. OWCP further advised appellant to submit medical evidence in support of her claim based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>5</sup> It afforded her 30 days to submit the necessary evidence.

By decision dated August 2, 2018, OWCP denied appellant's schedule award claim based on Dr. Cachola's opinion.

On August 8, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review of the August 2, 2018 decision. The hearing was held on January 10, 2019. At the hearing, counsel requested that OWCP refer appellant for an impairment rating. Appellant submitted a September 6, 2017 report by Dr. Cachola reiterating that appellant's left knee pain was caused by osteoarthritis unrelated to her federal employment.<sup>6</sup>

By decision dated March 15, 2019, an OWCP hearing representative affirmed the August 2, 2018 decision.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>7</sup> and its implementing regulations<sup>8</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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. 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>9</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>10</sup>

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based impairment method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).<sup>11</sup> Under the sixth edition, for lower extremity impairments the evaluator identifies the impairment of the class of diagnosis (CDX) condition, which is then

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<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>6</sup> Appellant also provided a duplicate copy of Dr. Cachola's July 27, 2017 report previously of record.

<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> *Id.* at § 10.404(a); *see also* *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>10</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).

<sup>11</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009), page 3, section 1.3, The ICF: A Contemporary Model of Disablement.

adjusted by grade modifiers including grade modifier for functional history (GMFH), grade modifier for physical examination (GMPE), and grade modifier for clinical studies (GMCS).<sup>12</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>13</sup> The standards for evaluation of permanent impairment of an extremity under the A.M.A., *Guides* are based on all factors that prevent a limb from functioning normally, such as pain, sensory deficit, and loss of strength.<sup>14</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish permanent impairment of the left lower extremity for schedule award purposes.

In support of her claim for a schedule award, appellant provided reports dated September 6, 2017 and February 9 and April 10, 2018 from Dr. Cachola, who opined that appellant was at MMI on September 14, 2015. Dr. Cachola attributed appellant's left knee symptoms to osteoarthritis, but negated causal relationship to the accepted August 24, 2015 left knee sprain. However, osteoarthritis of the knee is not an accepted condition in this claim. It is the appellant's burden of proof to submit medical evidence to establish that the accepted condition resulted in permanent impairment of the left knee.<sup>15</sup> Therefore, Dr. Cachola's opinion is insufficient to establish a permanent impairment of a scheduled member for schedule award purposes.<sup>16</sup>

It is the claimant's burden of proof to establish permanent impairment of the scheduled member or function of the body as a result of an employment injury.<sup>17</sup> OWCP procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred, describes the impairment insufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.<sup>18</sup> Thus, appellant was required to submit a medical report establishing a ratable permanent impairment under the A.M.A., *Guides*. She has not submitted a medical report upon which OWCP can properly review her claim for a schedule award. As appellant has not submitted the necessary medical evidence she has not met her burden of proof.<sup>19</sup>

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<sup>12</sup> *Id.* at 493-556.

<sup>13</sup> *Id.* at 521.

<sup>14</sup> *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *E.B.*, Docket No. 10-0670 (issued October 5, 2010); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>15</sup> *G.S.*, Docket No. 17-0481 (issued July 25, 2018).

<sup>16</sup> *Id.*

<sup>17</sup> *D.F.*, Docket No. 18-1337 (issued February 11, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>18</sup> *Supra* note 10 at Chapter 2.808.5 (March 2017).

<sup>19</sup> *Id.*; see *J.A.*, Docket No. 17-1846 (issued March 27, 2018).

On appeal counsel contends that OWCP's March 5, 2019 decision is contrary to fact and law. As set forth above, appellant has not met her burden of proof to submit a relevant medical report demonstrating permanent impairment of the left lower extremity for schedule award purposes.

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 permanent impairment of the left lower extremity for schedule award purposes.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 15, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2020  
Washington, DC

Christopher J. Godfrey, 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