

ISSUE

The issue is whether appellant has met her burden of proof to establish more than two percent permanent impairment of her left lower extremity, for which she previously received a schedule award.

FACTUAL HISTORY

On June 21, 2017 appellant, then a 63-year-old mission support assistant, filed a traumatic injury claim (Form CA-1) alleging that, on the previous day, she sustained injuries to her left thigh and left knee as a result of a case of water falling from her grasp and striking her while in the performance of duty.³ On July 19, 2017 OWCP accepted that she sustained contusions of the left knee and left thigh. It subsequently expanded acceptance of appellant's claim to include a tear of the medial meniscus of the left knee.

On October 25, 2017 appellant underwent an OWCP-authorized arthroscopic partial medial meniscectomy of the left knee. She was released to regular work on April 5, 2018.

In a report dated August 6, 2018, Dr. Andrew J. Palafox, a Board-certified orthopedic surgeon, reviewed appellant's history of injury and the medical record, noting that a magnetic resonance imaging (MRI) scan of the left knee had demonstrated results suggestive of patellar maltracking and medial compartment chondromalacia. He indicated that appellant had recovered from the October 25, 2017 left knee surgery and returned to work, and he noted that she presently complained of occasional stiffness and pain in her left knee, including pain when climbing stairs. Dr. Palafox opined that appellant had reached maximum medical improvement (MMI) on the date of his examination. On physical examination, he observed an active range of motion (ROM) of the left lower extremity from 0 to 135 degrees, with slight crepitus. The findings were negative for McMurray, Lachman, and drawer testing of the left lower extremity. Referring to Table 16-3 (Knee Regional Grid) on page 509 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),⁴ Dr. Palafox utilized the diagnosis-based impairment (DBI) rating method and noted that appellant's left medial meniscal injury constituted a class of diagnosis (CDX) at the class 1 level, thereby warranting a default value of two percent permanent impairment. He calculated a grade modifier for functional history (GMFH) of 1 based on appellant's symptoms, a grade modifier for physical examination (GMPE) of 1 based on her physical examination findings, and a grade modifier for clinical studies (GMCS) of 1 due to chondromalacia and patellar maltracking seen on an MRI scan. Application of the net adjustment formula did not require movement from the default value of two percent and Dr. Palafox concluded that appellant had two percent permanent impairment of her lower left extremity.

On January 29, 2019 appellant filed a claim for a schedule award (Form CA-7) due to her accepted conditions.

³ OWCP assigned the claim OWCP File No. xxxxxx243.

⁴ A.M.A., *Guides* (6th ed. 2009).

On January 31, 2019 OWCP referred appellant's case to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), and requested that he evaluate appellant's left lower extremity permanent impairment under the standards of the sixth edition of the A.M.A., *Guides*. In a report dated February 5, 2019, the DMA reviewed the medical record, including the August 6, 2018 report of Dr. Palafox, and concurred with the assessment and rating Dr. Palafox provided for the left lower extremity of two percent permanent impairment. He explained that ROM impairment rating method was inapplicable, as appellant's diagnosed condition did not qualify for this rating method under Table 16-3 and her case did not meet the rare criteria of Section 16.7 on page 543 of the A.M.A., *Guides*. The DMA advised that the date of MMI was August 6, 2018, the date of Dr. Palafox's examination. He noted that appellant had previously received a schedule award for 20 percent permanent impairment of the "left" lower extremity under OWCP File No. xxxxxx134⁵ and requested additional information and clarification regarding that prior schedule award.

On April 4, 2019 OWCP issued a memorandum which clarified that the prior schedule award under OWCP File No. xxxxxx134 was for 20 percent of the right lower extremity, not the left lower extremity. It referred the case file, along with a statement of accepted facts (SOAF), to the DMA for a supplemental opinion with regard to appellant's left lower extremity permanent impairment. In an addendum report dated April 9, 2019, the DMA confirmed that appellant had not previously received a schedule award for left lower extremity permanent impairment.

On May 3, 2019 OWCP again requested an addendum report from the DMA regarding the appellant's left lower extremity permanent impairment. On May 7, 2019 the DMA found that appellant had two percent permanent impairment of her left lower extremity.

On May 20, 2019 OWCP requested that the DMA confirm his opinion with regard to the extent of appellant's left lower extremity permanent impairment in the present case. On May 23, 2019 the DMA again found that appellant had two percent permanent impairment of her left lower extremity as a result of the accepted June 20, 2017 employment injury.

By decision dated June 18, 2019, OWCP granted appellant a schedule award for two percent permanent impairment of her left lower extremity. The award ran for 5.76 weeks from August 6 through September 15, 2018 and was based on the opinions of Dr. Palafox and the DMA.

LEGAL PRECEDENT

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

⁵ OWCP File No. xxxxxx134, was accepted for tear of the medial meniscus of the right knee due to a December 8, 2000 work-related injury. OWCP File No. xxxxxx134 has not been administratively combined with the present claim.

⁶ *Supra* note 1.

⁷ 20 C.F.R. § 10.404.

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 2009.⁸ 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

In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, 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 509.¹¹ The evaluator identifies the impairment CDX, which is then adjusted by GMFH, GMPE, and GMCS.¹² The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹³ Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹⁴

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the percentage of permanent impairment using the A.M.A., *Guides*.¹⁵

ANALYSIS

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

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* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁹ *A.C.*, Docket No. 19-1333 (issued January 8, 2020); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

¹⁰ A.M.A., *Guides* 3, Section 1.3, International Classification of Functioning, Disability, and Health (ICF): A Contemporary Model of Disablement.

¹¹ *Id.* at 509-11.

¹² *Id.* at 494-531.

¹³ *Id.* at 521.

¹⁴ *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹⁵ *Supra* note 8 at Chapter 2.808.6(f) (March 2017); *B.B.*, Docket No. 18-0782 (issued January 11, 2019).

Appellant submitted an August 6, 2018 report from Dr. Palafox, who referenced Table 16-3 of the sixth edition A.M.A., *Guides*, and applied the DBI rating method. Dr. Palafox determined that appellant's left medial meniscal injury constituted a class 1 injury with respect to the CDX and fell under the default value of two percent permanent impairment.¹⁶ He then properly calculated a GMFH of 1 based on her mild symptoms, a GMPE of 1 based on her mild physical examination findings, and a GMCS of 1 due to her mild findings (chondromalacia and patellar maltracking) seen on an MRI scan.¹⁷ Application of the net adjustment formula did not require movement from the default value of two percent and Dr. Palafox correctly concluded that appellant had two percent permanent impairment of her lower left extremity.

OWCP properly routed the medical evidence to the DMA who reviewed the medical record, including the August 6, 2018 report of Dr. Palafox.¹⁸ The DMA concurred with Dr. Palafox's assessment and the rating he provided for the left lower extremity of two percent permanent impairment under the sixth edition of the A.M.A., *Guides*. He also properly explained that the ROM methodology for rating appellant's permanent impairment of the left lower extremity was not available, given the accepted diagnosis.¹⁹

The Board finds that the opinions of Dr. Palafox and the DMA constitute the weight of the medical evidence with respect to the permanent impairment of appellant's left lower extremity because they properly applied the appropriate standards of the A.M.A., *Guides*.²⁰

As the record contains no other probative, rationalized medical opinion indicating that appellant has more than two percent permanent impairment of the left lower extremity based on the sixth edition A.M.A., *Guides*, she has not met her burden of proof to establish greater impairment.²¹

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 her left lower extremity, for which she previously received a schedule award.

¹⁶ A.M.A., *Guides* 509, Table 16-3.

¹⁷ See *supra* notes 11 and 12.

¹⁸ See *supra* note 14.

¹⁹ A.M.A., *Guides* 509, Table 16-3.

²⁰ See *N.M.*, Docket No. 19-1925 (issued June 3, 2020); *L.D.*, Docket No. 19-0797 (issued October 2, 2019).

²¹ See *J.H.*, Docket No. 18-1207 (issued June 20, 2019).

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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