

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

V.C., Appellant	)	
	)	
and	)	<b>Docket No. 19-1565</b>
	)	<b>Issued: May 1, 2020</b>
	)	
<b>DEPARTMENT OF HEALTH &amp; HUMAN</b>	)	
<b>SERVICES, PINON HEALTH CENTER,</b>	)	
<b>Pinon, AZ, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 16, 2019 appellant filed a timely appeal from a May 23, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 more than 25 percent permanent impairment of the right lower extremity, for which she previously received a schedule award.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On January 28, 2010 appellant, then a 51-year-old clinical registered nurse, filed a traumatic injury claim (Form CA-1) alleging that on January 25, 2010 she sprained her pelvis when she slipped on ice in the employee parking lot while in the performance of duty.

On April 1, 2010 OWCP accepted the claim for pelvis sprain and paid wage-loss compensation for intermittent periods of disability. Appellant underwent an OWCP-authorized right hip labral tear repair on July 22, 2010 and total right hip replacement surgery on May 3, 2012.

On January 26, 2018 appellant filed a claim for a schedule award (Form CA-7). As no medical evidence was submitted with her claim, by development letter dated November 28, 2018, OWCP requested that she submit an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup> It afforded appellant 30 days to submit the requested evidence.

On January 29, 2019 OWCP expanded the acceptance of appellant's claim to include right labral tear, permanent aggravation of right hip arthritis, and right hip pelvis sprain.

On February 21, 2019 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a set of questions, to Dr. Stanley J. Mathew, a Board-certified physiatrist, for a second opinion evaluation to determine the extent of her employment-related permanent impairment based on the sixth edition of the A.M.A., *Guides* and the date she reached maximum medical improvement (MMI).

In a March 15, 2019 medical report, Dr. Mathew noted that he had reviewed the SOAF, the medical record, and performed a physical examination on March 13, 2019. He reported tenderness in the right hip, S1 joint, trochanteric bursa, lower spine, and left hip; passive range of motion (ROM) testing of the right hip and lumbar spine was limited by severe pain and demonstrated 4+/5 strength in the left lower extremity and right knee and 3+/5 strength in the right hip; sensation that was grossly intact to light touch and pinprick over the bilateral lower extremities, muscle strength reflexes were 1+ in the knees and difficult in the ankles; sitting balance was good, and standing balance was fair with a walker. Dr. Mathew provided impressions of chronic right hip pain status post labral repair, status post total right hip replacement, gait and balance dysfunction, osteoarthritis, and right pelvic strain. He determined that appellant reached MMI as of May 3, 2013, one year postsurgery. Dr. Mathew related that she continued to suffer from chronic pain and weakness in her right lower extremity.

Dr. Mathew opined that, pursuant to the diagnosis-based (DBI) impairment rating method in the sixth edition of the A.M.A., *Guides*, appellant had 37 percent permanent impairment of the right lower extremity. He referenced Table 16-4, page 515, and identified the diagnosis (CDX) of total right hip replacement as a class 3 impairment. Dr. Mathew assigned a grade modifier 3 for functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS). Using the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), he calculated that

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

appellant had a net adjustment of  $(3-3) + (3-3) + (3-3) = 0$ , which resulted in a grade C default value or 37 percent permanent impairment of the right lower extremity.

On April 11, 2019 OWCP referred the case record to Dr. Michael M. Katz, an OWCP district medical adviser (DMA) and Board-certified in orthopedic surgery. In an April 18, 2019 report, Dr. Katz noted appellant's accepted conditions and reviewed the medical record, including Dr. Mathew's March 13, 2019 impairment rating evaluation. Utilizing Table 16-4, Hip Regional Grid, page 515, he identified a diagnosis of total hip replacement with a good result as a class 2 impairment with a default value of 25 percent. Dr. Katz assigned a grade modifier 2 for GMFH and GMPE. He noted that a grade modifier for GMCS was not applicable based on his review of the record. Applying the net adjustment formula of  $(GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX)$ , Dr. Katz calculated that appellant had a net adjustment of  $(2-2) + (2-2) = 0$ , which resulted in a class 2, grade C impairment, which equaled 25 percent permanent impairment of the right lower extremity. He explained that his impairment rating was less than Dr. Mathew's impairment rating, noting that based on his review of the record, Dr. Mathew's report did not establish/document a ROM deficit that could be classified as mild under Table 16-24 or show a suboptimal prosthetic position or instability. Dr. Katz related that these criteria were necessary to establish a class 3 impairment. He determined that appellant reached MMI on March 13, 2019, the date of Dr. Mathew's examination upon which the impairment rating was based.<sup>3</sup>

OWCP, by decision dated May 23, 2019, granted appellant a schedule award for 25 percent permanent impairment of the right lower extremity based on the permanent impairment evaluation of the DMA. The date of MMI was noted as March 13, 2019 and the award ran 72.0 weeks from March 13, 2019 to July 28, 2020.<sup>4</sup>

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>5</sup> and its implementing federal regulations,<sup>6</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. 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

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<sup>3</sup> The Board notes that, it appears that Dr. Katz inadvertently identified the date of MMI as August 7, 2014 rather than March 13, 2019. He noted that his date of MMI determination was based on the date of Dr. Mathew's impairment evaluation which was March 13, 2019.

<sup>4</sup> The Board also notes that, it appears that OWCP, in its May 23, 2019 decision, inadvertently indicated that the date of MMI was March 31, 2019 and that the schedule award period started on the same date rather than March 13, 2019. The May 21, 2019 schedule award payment memorandum and OWCP payment records indicate that the date of MMI was March 13, 2019 and the schedule award period started on that same date.

<sup>5</sup> *Supra* note 1.

<sup>6</sup> 20 C.F.R. § 10.404.

specified edition of the A.M.A., *Guides*, published in 2009.<sup>7</sup> 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.<sup>8</sup>

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).<sup>9</sup> Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by GMFH, GMPE, and GMCS.<sup>10</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>11</sup> Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.<sup>12</sup>

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*.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish more than 25 percent permanent impairment of the right lower extremity, for which she previously received a schedule award.

In a March 15, 2019 report, Dr. Mathew, OWCP's second opinion physician, found that appellant had 37 percent impairment of her right lower extremity due to a fair result of her total hip replacement. He utilized the DBI method for rating appellant's permanent impairment. Under Table 16-4, Hip Regional Grid, page 515 of the A.M.A., *Guides*, Dr. Mathew identified the diagnosis of total hip replacement as a class 3 impairment with a default rating of 37 percent. He applied GMFH, GMPE, and GMCS of 3 for each to the net adjustment formula, resulting in a net adjustment of 0, which equaled 37 percent permanent impairment of the right lower extremity.

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<sup>7</sup> For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6<sup>th</sup> 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).

<sup>8</sup> *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>9</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009), p.3, section 1.3, International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

<sup>10</sup> *Id.* at 494-531.

<sup>11</sup> *Id.* at 521.

<sup>12</sup> *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

<sup>13</sup> *Supra* note 7 at Chapter 2.808.6(f) (March 2017); *A.C.*, Docket No. 19-1333 (issued January 8, 2020); *B.B.*, Docket No. 18-0782 (issued January 11, 2019).

On April 18, 2019 Dr. Katz, a DMA, noted appellant's accepted conditions and reviewed the medical record, including the clinical findings of Dr. Mathew. He, however, disagreed regarding the extent of permanent impairment to appellant's right lower extremity. Dr. Katz found that appellant had 25 percent impairment of the right lower extremity due to a good result of her total hip replacement. He utilized the DBI method for rating her permanent impairment. Under Table 16-4, Dr. Katz identified the diagnosis of total hip replacement as a class 2 impairment with a default rating of 25 percent. He assigned a grade modifier 2 for GMFH and GMPE. Dr. Katz found a grade modifier for GMCS was not applicable based on his review of the record. He applied GMFH and GMPE of 2 to the net adjustment formula, finding an adjustment of 0, which equaled 25 percent permanent impairment of the right lower extremity. Dr. Katz explained that Dr. Mathew's report did not establish/document a ROM deficit that could be classified as mild under Table 16-24<sup>14</sup> or show a suboptimal prosthetic position or instability.<sup>15</sup> He related that these criteria were required to establish a class 3 impairment.

The Board finds that Dr. Katz properly applied the A.M.A., *Guides* to find that appellant had no more than 25 percent permanent impairment of the right lower extremity, for which she previously received schedule award compensation. As such, appellant has not met her burden of proof to establish increased permanent impairment greater than that which was previously awarded.

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 25 percent permanent impairment of the right lower extremity, for which she previously received a schedule award.

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<sup>14</sup> A.M.A., *Guides* 549, Table 16-24.

<sup>15</sup> *Id.* at 515, Table 16-4.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2020  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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