

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

C.N., Appellant)	
)	
and)	Docket No. 20-0543
)	Issued: November 30, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Cleveland, OH, Employer)	
)	

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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 13, 2020 appellant filed a timely appeal from a January 3, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 3, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than 58 percent permanent impairment of the left lower extremity, for which she previously received schedule award compensation.

FACTUAL HISTORY

On December 5, 1987 appellant, then a 28-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a left knee injury when she bumped her knee on the corner of her desk while in the performance of duty. She stopped work on December 6, 1987 and returned on December 15, 1987. OWCP accepted the claim for left knee contusion on January 5, 1988. It authorized left knee arthroscopy and open lateral retinacular release, which occurred on February 17, 1988. On April 20, 1988 OWCP expanded acceptance of the claim to include left knee internal derangement.

On April 13, 1988 appellant filed a claim for a schedule award (Form CA-7). In support of her claim, she submitted a June 29, 1989 report from Dr. Curtis W. Smith, a Board-certified orthopedic surgeon. Dr. Smith provided appellant's physical examination findings, diagnosed left knee joint with chronic evidence of lateral subluxation and chondromalacia, and related that she had 25 percent permanent impairment of her left lower extremity.

On October 13, 1989 a district medical adviser (DMA) reviewed the medical evidence, including Dr. Smith's report, and concluded that appellant had 30 percent permanent impairment of the left lower extremity pursuant to the third edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),³ then in effect, due to left knee contusion, arthroscopic surgery, and left knee internal derangement.

By decision dated October 30, 1989, OWCP granted appellant a schedule award for 30 percent permanent impairment of the left lower extremity. The period of the award ran from June 28, 1989 to February 22, 1991.

OWCP subsequently received a September 27, 1991 report from Dr. Smith, who related that appellant had 40 percent permanent impairment of the left lower extremity. He explained that she had decreased range of motion (ROM) of the left knee, and increased effusion, pain, and symptomatology.

On November 14, 1991 OWCP referred Dr. Smith's September 27, 1991 report to a DMA for review. In a November 15, 1991 report, the DMA using the third edition of the A.M.A., *Guides* determined that appellant had a total of 58 percent permanent impairment of the left lower extremity and noted September 27, 1991 as the date of maximum medical improvement (MMI).

³ A.M.A., *Guides* (3rd ed. 1988).

By decision dated November 29, 1991, OWCP granted appellant a schedule award for an additional 28 percent permanent impairment of the left lower extremity. The period of the award ran from September 27, 1991 to April 13, 1993.

OWCP authorized left knee arthroscopic surgery with debridement of scar tissue and adhesions, which occurred on February 6, 1995; left knee partial medial meniscectomy, partial lateral meniscectomy, chondroplasty of the patella, and synovectomy, plica excision, which occurred April 16, 2014; left knee arthroscopy with partial lateral meniscectomy, which occurred on October 19, 2015; and left knee partial meniscectomy, partial medial meniscectomy, tricompartmental synovectomy, osteophytectomy of the notch, which occurred on May 15, 2017. Appellant received wage-loss compensation on the supplemental rolls as of May 15, 2017 and on the periodic rolls as of June 25, 2017.

On September 12, 2017 OWCP expanded acceptance of the claim to include left lower leg other synovitis and tenosynovitis, left knee complex lateral meniscus tear, and noted the previously accepted the conditions of left old bucket handle medial meniscus tear, left lower leg contusion, left closed orbital floor fracture, and left lower leg traumatic arthropathy.

OWCP authorized a total left knee arthroplasty, which occurred on November 3, 2017.

On February 10, 2019 appellant filed claims for an additional schedule award (Form CA-7).

In support thereof, appellant submitted a March 18, 2019 report from Dr. Stephen D. Helper, a Board-certified orthopedic surgeon, who noted appellant's physical examination findings and opined that appellant had reached MMI.

Appellant, through her then-counsel, subsequently submitted a May 7, 2019 report from Dr. Sami E. Moufawad, a Board-certified physiatrist and pain medicine physician. Dr. Moufawad diagnosed left lower leg other synovitis and tenosynovitis, left knee complex lateral meniscus tear, left old bucket handle medial meniscus tear, left lower leg and knee contusion, left closed orbital floor fracture, and left lower leg traumatic arthropathy. Utilizing the diagnosis-based impairment (DBI) method, he found that appellant had 31 percent permanent impairment of the left lower extremity pursuant to the sixth edition of the A.M.A., *Guides*.⁴ Under Table 16-3, Knee Regional Grid, page 511 of the A.M.A., *Guides*, Dr. Moufawad identified the class of diagnosis (CDX) as a class 3 impairment for the diagnosis of fair result of the total knee replacement. He assigned grade modifier for functional history (GMFH) of 1 in accordance with Table 16-6, page 516 due to appellant's limp and occasional use of a cane. Dr. Moufawad found that a grade modifier for physical examination (GMPE) was inapplicable as it was used for class determination. He assigned grade modifier for clinical studies (GMCS) of one in accordance with Table 16-8, page 519 as the clinical studies confirmed showed knee osteoarthritic changes. Using the net adjustment formula of (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), he calculated that appellant had a net adjustment of -2, resulting in movement from the default value of C to A and corresponding to 31 percent left lower extremity permanent impairment.

⁴ A.M.A., *Guides* (6th ed. 2009).

On June 18, 2019 OWCP forwarded a copy of the medical record and an updated SOAF to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon, serving as a DMA. In a June 24, 2019 report, Dr. Harris noted his review of the record, including Dr. Moufawad's May 7, 2019 report. He noted that appellant's diagnosed left knee conditions did not meet the criteria discussed in section 16.7, page 543 of the A.M.A., *Guides* to allow that the impairment be calculated under the ROM method. Dr. Harris concurred with Dr. Moufawad's permanent impairment rating of 31 percent left lower extremity, based upon her fair result following knee replacement with mild motions deficits under Table 16-3, page 511 of the A.M.A., *Guides*.

By decision dated July 16, 2019, OWCP denied appellant's request for an additional schedule award.

In a letter dated July 23, 2019, appellant, through her then-counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on November 4, 2019.

By decision dated January 3, 2020, OWCP hearing representative affirmed the July 16, 2019 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA⁵ and its implementing regulations⁶ 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.⁷ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁸

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁹ Under the sixth edition, for lower extremity impairments the evaluator identifies the impairment of the CDX, which is then adjusted by grade modifiers of GMFH, GMPE, and

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Id.* at 10.404(a); *see also S.C.*, Docket No. 19-1177 (issued August 27, 2020); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2009).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Chapter 3.700.2 and Exhibit 1 (January 2010).

⁹ A.M.A., *Guides*, page 3, section 1.3, The International Classification of Functioning, Disability, and Health (ICF): A Contemporary Model of Disablement.

GMCS.¹⁰ The net adjustment formula is $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$.¹¹ 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.¹²

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 permanent impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than 58 percent permanent impairment of her left lower extremity, for which she previously received schedule award compensation.

In a May 7, 2019 report, Dr. Moufawad, utilized the DBI methodology and found that appellant had 31 percent impairment of the left lower extremity due to a fair result of her total knee replacement. Under Table 16-3, *Knee Regional Grid*, page 511 of the A.M.A., *Guides*, Dr. Moufawad identified the diagnosis of total knee replacement as a class 3 impairment. He applied GMFH, GMPE, and GMCS to the net adjustment formula, which resulted in a net adjustment of -2, which moved the default value of C to A equaling a 31 percent permanent impairment of the left lower extremity.

OWCP properly referred the evidence of record to DMA Dr. Harris. On June 24, 2019 Dr. Harris noted appellant's accepted conditions and reviewed the medical record, including the clinical findings of Dr. Moufawad. He properly explained that her left knee diagnoses did not allow for a ROM rating under the A.M.A., *Guides*. Dr. Harris agreed with Dr. Moufawad's 31 percent left lower extremity impairment rating, based upon appellant's fair result following knee replacement with mild motions deficits under Table 16-3, page 511 of the A.M.A., *Guides*.

As there is no probative medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has greater than the 58 percent permanent impairment of her left lower extremity previously awarded, the Board finds that appellant has not met her burden of proof.

¹⁰ *Id.* at 493-556.

¹¹ *Id.* at 521.

¹² *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *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).

¹³ *See supra* note 6 at Chapter 2.808.6(f) (March 2017).

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 greater than 58 percent permanent impairment of her lower extremity, for which she previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 30, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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