

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

S.A., Appellant	)	
	)	
and	)	<b>Docket No. 20-0890</b>
	)	<b>Issued: January 27, 2021</b>
DEPARTMENT OF HOMELAND SECURITY,	)	
CUSTOMS & BORDER PROTECTION,	)	
El Paso, TX, 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  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 17, 2020 appellant filed a timely appeal from a February 28, 2020 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 his burden of proof to establish more than three percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

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

## **FACTUAL HISTORY**

On August 3, 2018 appellant, then a 46-year-old field intelligence agent, filed a traumatic injury claim (Form CA-1) alleging that, on August 2, 2018 when arising from his chair, he caught his left foot on torn carpet causing his left knee to pop while in the performance of duty. OWCP accepted the claim for a peripheral tear of the medial meniscus of the left knee. On October 1, 2018 appellant underwent an OWCP-authorized left knee arthroscopic partial lateral meniscectomy and loose body removal. He returned to work in a modified limited-duty position on November 19, 2018 and subsequently returned to full-duty work on February 7, 2019.

In a report dated March 13, 2019, Dr. Michael Mrochek, Board-certified in physical medicine and rehabilitation, reviewed appellant's history of injury and medical record, noting that appellant continued to experience pain in the left knee. On physical examination, he observed mild joint line tenderness medially in the left knee, as well as bilateral patellar crepitus. Dr. Mrochek performed three measurements of the left knee active range of motion (ROM) from 0 to 115 degrees. He diagnosed a peripheral tear of the medial meniscus of the left knee. Referring to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>2</sup> Dr. Mrochek rendered an impairment rating based on the ROM method. Referencing Table 16-23, page 549, he noted a five-degree flexion contracture. Dr. Mrochek explained that the ROM method resulted in 10 percent left lower extremity permanent impairment. Referencing Table 16-3, page 509, he noted that the diagnosis-based method (DBI) applied to a partial lateral meniscectomy constituted a class of diagnosis (CDX) at the class 1 level, grade C, with a default value of two percent left lower extremity permanent impairment. Dr. Mrochek calculated a grade modifier for functional history (GMFH) of 1, as well as a grade modifier for physical examination (GMPE) of 1. The grade modifier for clinical studies (GMCS) was not used. Application of the net adjustment formula did not require movement from the default value of two percent under the DBI method. Dr. Mrochek explained that, as the two percent permanent impairment calculated under the DBI method was the lesser of the two methods, appellant had 10 percent permanent impairment of the left lower extremity based on the ROM method. He stated that the date of maximum medical improvement (MMI) was February 7, 2019.

On March 15, 2019 appellant filed a claim for a schedule award (Form CA-7).

On June 6, 2019 OWCP referred the record to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for review and rating of appellant's permanent impairment of the left lower extremity in accordance with the sixth edition of the A.M.A., *Guides*.

In a June 10, 2019 report, Dr. Harris reviewed a statement of accepted facts and the medical record, including the March 13, 2019 report of Dr. Mrochek. He advised that the diagnosis of status post left knee arthroscopic partial lateral meniscectomy and loose body removal had been established. Using the DBI method with reference to appellant's left knee condition, the DMA concurred with Dr. Mrochek that, under the sixth edition of the A.M.A., *Guides*, Table 16-3, page 509, appellant had two percent permanent impairment of the left lower extremity using the DBI

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

method. He noted that Dr. Mrochek had calculated appellant's impairment using both the DBI and ROM rating methods. Referencing section 16.7, page 543, of the A.M.A., *Guides*, the DMA explained that the A.M.A., *Guides* allow for the ROM method to be used as a standalone rating when there were no DBI sections that were applicable or in rare cases when a severe injury results in passive ROM loss qualifying for class 3 or 4 impairment or for amputation ratings. He explained that because the A.M.A., *Guides* did contain an appropriate DBI for appellant's diagnosed condition, it did not meet any of the criteria of section 16.7, page 543, of the A.M.A., *Guides* to allow for impairment to be calculated under the ROM method. The DMA determined that the date of MMI was February 7, 2019.

On August 20, 2019 Dr. Mrochek disagreed with the DMA's impairment rating. He stated that the DMA had incorrectly interpreted the sixth edition A.M.A., *Guides*, as the permanent impairment rating was to be made based on the greater of the impairment ratings obtained by the DBI method or the ROM method.

OWCP determined that a conflict of medical opinion existed between Dr. Mrochek and Dr. Harris, the DMA, regarding the extent of appellant's left lower extremity impairment. It referred appellant to Dr. James F. Hood, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated October 23, 2019, Dr. Hood, an impartial medical examiner (IME), reviewed appellant's history regarding the August 2, 2018 employment injury and subsequent October 1, 2018 left knee surgery. On physical examination of appellant's left lower extremity, he found that appellant lacked five degrees of full active extension with no flexion contracture and flexion to 115 degrees. Dr. Hood observed healed arthroscopic portals, tenderness over the patellofemoral area with discomfort on patellofemoral compression with minimal medial or lateral joint line tenderness. He noted that the knee was stable with negative Lachman and anterior drawer tests. Medial and lateral stability was normal. Dr. Hood further noted that a magnetic resonance imaging scan on September 19, 2018 indicated with reference to the medial meniscus, a posterior root ligament with a striated appearance and predominant femoral and tibial surface linear hyperintensity at the outer half of the posterior horn with mucoid degeneration. It also demonstrated, with regard to appellant's patellofemoral area, that there was a lateral patellar cluster of high-grade chondral fissures, a central trochlear probable full-thickness chondral fissure, a medial low-grade femoral weight-bearing chondral fissure, effusion, and large, multiple chondral and ossific loose bodies. Dr. Hood concurred that appellant reached MMI on February 7, 2019 noting that at that time appellant had full ROM of the knee. He also explained that any limitation of motion would have been secondary to the preexisting and nonaggravated findings of patellofemoral chondromalacia as well as medial compartment arthritis and therefore not part of any impairment secondary to the work injury. Referring to the sixth edition A.M.A., *Guides*, Dr. Hood noted that Table 16-3 for the CDX of partial lateral meniscectomy indicated a class 1 with a default impairment of two percent of the left lower extremity. Referring to Table 16-7, the GMPE would be 2 for moderate findings on physical examination. The GMFH would be 1 for a mild functional lower limb study. The GMCS under Table 16-8 would be 2 for moderate findings. Applying the net adjustment formula, Dr. Hood found that appellant had three percent permanent impairment of the left lower extremity.

By decision dated February 28, 2020, OWCP granted appellant a schedule award for three percent permanent impairment of the left lower extremity. The award ran for 8.64 weeks from February 7 to April 8, 2019. OWCP noted that the schedule award was based on the October 23, 2019 impartial medical opinion of Dr. Hood.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>3</sup> and its implementing regulations<sup>4</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 of a member 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 through its implementing regulations, OWCP has adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>5</sup> As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>6</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>7</sup>

In determining permanent impairment of 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.<sup>8</sup> After the CDX is determined from the Knee Regional Grid (including identification of a default grade value), the net adjustment formula is applied using GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>9</sup> Under Chapter 2.3, the evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.<sup>10</sup>

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.* See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); see also *id.* Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>7</sup> *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>8</sup> See A.M.A., *Guides* 509-11 (6<sup>th</sup> ed. 2009).

<sup>9</sup> *Id.* at 515-22.

<sup>10</sup> *Id.* at 23-28.

third physician who shall make an examination.<sup>11</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to an IME, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.<sup>12</sup> Where a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than three percent permanent impairment of the left lower extremity, for which he previously received a schedule award.

OWCP accepted that appellant sustained a peripheral tear of the medial meniscus of the left knee. Appellant underwent an OWCP-authorized left knee arthroscopic partial lateral meniscectomy and loose body removal on October 1, 2018.

OWCP properly determined that a conflict in the medical opinion evidence existed between Dr. Mrochek, a treating physician, and Dr. Harris, an OWCP DMA, regarding the extent of appellant's permanent impairment of the left lower extremity due to appellant's accepted work-related condition. Dr. Mrochek had opined that the nature of appellant's left leg permanent impairment allowed a rating under the sixth edition of the A.M.A., *Guides* utilizing the ROM method as the DBI method did not allow a rating for appellant's full functional loss, while the DMA opined that the appellant's permanent impairment was not an exceptional circumstance which allowed rating under the ROM method, pursuant to the guidelines provided in section 16-7, page 543 of the A.M.A., *Guides*.

Dr. Hood was selected as the IME to resolve the conflict in medical opinion, pursuant to 5 U.S.C. § 8123(a). In his October 23, 2019 report, he reviewed appellant's history regarding the August 2, 2018 employment injury and appellant's October 1, 2018 left knee surgery. On physical examination of appellant's knee, Dr. Hood found five degrees lack of full active extension with no flexion contracture and flexion to 115 degrees. He concurred that appellant reached MMI on February 7, 2019. Dr. Hood properly applied the DBI methodology for rating appellant's permanent impairment of the left lower extremity, as the ROM methodology was not applicable given the accepted diagnosis and appellant's examination findings.<sup>14</sup> He noted that appellant's loss of ROM was not due to his accepted left knee condition, but rather was due to preexisting and nonaggravated findings of patellofemoral chondromalacia as well as medial compartment arthritis, and therefore was not part of any impairment secondary to the work injury. Referring to the sixth edition A.M.A., *Guides*, Dr. Hood properly noted that Table 16-3 for the CDX of partial lateral meniscectomy indicated class 1 with a default impairment of two percent of the left lower extremity. Referring to Table 16-7, he properly found that the GMPE would be 2 for moderate

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<sup>11</sup> 5 U.S.C. § 8123(a).

<sup>12</sup> *C.R.*, Docket No. 18-1285 (issued February 12, 2019).

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

<sup>14</sup> A.M.A., *Guides* 509, Table 16-3; *see V.S.*, Docket No. 19-1679 (issued July 8, 2020).

findings on physical examination, incorporating appellant's loss of ROM as a factor in this assessment. Dr. Hood properly calculated that the GMFH would be 1 for a mild functional lower limb study. He properly found that the GMCS under Table 16-8 would be 2 for moderate findings. Applying the net adjustment formula, Dr. Hood properly calculated that appellant had three percent permanent impairment of the left lower extremity.

The Board finds that Dr. Hood's impartial medical opinion is sufficiently well rationalized, having properly applied the appropriate standards of the A.M.A., *Guides*, and based upon a proper factual and medical background such that it is entitled to special weight.<sup>15</sup> The evidence of record therefore establishes that appellant has three percent permanent impairment of the left lower extremity.

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 his burden of proof to establish greater than three percent permanent impairment of the left lower extremity, for which he previously received a schedule award.

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<sup>15</sup> See *V.S., id.*; *M.R.*, Docket No. 19-0526 (issued July 24, 2019); *N.L.*, Docket No. 18-0743 (issued April 10, 2019); *A.H.*, Docket No. 18-0050 (issued March 26, 2018); *J.J.*, Docket No. 10-1758 (issued May 16, 2011).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 28, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2021  
Washington, DC

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

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

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