United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 20-1380**
	)	**Issued: May 12, 2021**
U.S. POSTAL SERVICE INSPECTION SERVICE, New York, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 13, 2020 appellant filed a timely appeal from a July 8, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issue is whether appellant has met his burden of proof to establish greater than one percent permanent impairment of his left lower extremity and four percent permanent impairment of his right lower extremity, for which he has previously received a schedule award.

FACTUAL HISTORY

On November 7, 2007 appellant, then a 37-year-old postal inspector, filed a traumatic injury claim (Form CA-1) alleging on that date he was struck by a two-ton postal truck, injuring both knees while in the performance of duty. He stopped work on that date. On December 6, 2007

[1] 5 U.S.C. § 8101 *et seq.*

OWCP accepted the claim for bilateral knee strains. Appellant returned to light-duty work from December 10, 2007 through January 28, 2008. On January 28, 2008 appellant underwent surgical microfracture of the right patella with chondroplasty, and partial medial meniscectomy. He returned to full-duty work on October 9, 2008.

On July 27, 2010 appellant's attending physician, Dr. Daniel J. Mulholland, a Board-certified orthopedic surgeon, diagnosed post-traumatic arthritis right knee. He continued to treat appellant for with injections of viscosupplementation or cortisone in the right knee from August 14, 2008 through January 9, 2014 at which point he began bilateral knee injections continuing through November 8, 2019.

Dr. Mullholland continued to treat appellant. In a December 2, 2010 note, he diagnosed patellofemoral syndrome/chondromalacia patella, left knee. On August 7, 2012 Dr. Mulholland examined appellant due to chronic right ankle sprain and possible osteochondritis dissecans. He diagnosed post-traumatic patellofemoral arthrosis both knees, right greater than left on December 6, 2012. In a May 23, 2013 note, Dr. Mulholland diagnosed medial meniscus tear of the left knee based on a May 17, 2013 magnetic resonance imaging (MRI) scan. On May 16, 2013 he diagnosed osteochondritis dissecans of the anterolateral talus, right ankle.

Dr. Mulholland examined appellant on February 13, 2019 and reviewed bilateral knee x-rays finding relatively mild degenerative changes and that joint spaces were well maintained on sunrise view. He diagnosed bilateral post-traumatic osteoarthritis and chondromalacia patella/ patella femoral arthrosis. Dr. Mulholland recommended viscosupplementation.

On July 9, 2019 appellant filed a claim for a schedule award (Form CA-7).

In a July 17, 2019 development letter, OWCP requested that appellant submit a detailed narrative medical report in support of his schedule award claim. It afforded him 30 days to respond. On August 6, 2019 appellant reported that Dr. Mulholland did not conduct schedule award examinations.

On October 24, 2019 OWCP referred appellant for a second opinion evaluation with Dr. Kevin S. White, an osteopath and Board-certified orthopedic surgeon, for evaluation and opinion on permanent impairment of the lower extremities for schedule award purposes.

In a November 6, 2019 note, Dr. Mulholland diagnosed bilateral post-traumatic osteoarthritis and recommended viscosupplementation. He requested authorization for this treatment on November 8, 2019 which OWCP approved on November 14, 2019. In his January 3, 2020 report, Dr. White reviewed appellant's history of injury and performed a physical examination. He found that appellant's left knee had no medial or lateral joint line tenderness, negative testing including anterior drawer, posterior drawer, Lachman, pivot shift, valgus stress, and varus stress. Appellant demonstrated positive McMurray's tests medially and laterally. Dr. White found his strength was 5/5 and listed indicated his left knee flexion as 120 degrees, 110 degrees, and 115 degrees. In regard to appellant's right knee, Dr. White found mild effusion, pain on range of motion with flexion, patellofemoral joint and medial femoral condyle tenderness. Appellant had normal ligament stability testing and strength. His right knee flexion was 95 degrees, 90 degrees, and 95 degrees. Dr. White diagnosed post-traumatic arthritis of the right knee as well as left knee strain with posterior horn and medial meniscus tear. He found that appellant

was at maximum medical improvement (MMI). Using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)[2] Dr. White determined that appellant had 12 percent permanent impairment of the right lower extremity and 10 percent permanent impairment of the left lower extremity. Utilizing Table 16-3, Knee Regional Grid,[3] he assigned a class of diagnosis (CDX) of 1 for the diagnosis of right patellofemoral arthritis with a 2 millimeter cartilage interval. Dr. White assigned grade modifier for functional history (GMFH) of 1, due to difficulty walking up hills, a grade modifier for physical examination (GMPE) of 2, due to loss of range of motion, and a grade modifier for clinical studies (GMCS) of 1, based on MRI scan findings revealing mild arthritis.[4] He explained that application of the net adjustment formula resulted in a finding of +1 or grade D, 12 percent permanent impairment of the right lower extremity.[5] Dr. White also noted that appellant had 10 percent permanent impairment due to 95 degrees of right knee flexion in accordance with Table 16-23.[6]

In regard to appellant's left lower extremity, Dr. White again utilized Table 16-3 and diagnosed left medial meniscus tear and assigned a CDX of 1.[7] He applied GMFH and GMPE of 0 as well as GMCS of 1, based on the MRI scan revealing the meniscal tear and applied the net adjustment formula to reach -2 or grade A, 1 percent permanent impairment of the left lower extremity.[8]

On February 3, 2020 OWCP routed Dr. White's report, a statement of accepted facts (SOAF), and the case record to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), for review and evaluation of appellant's permanent impairment pursuant to the A.M.A., *Guides*. Dr. Katz was also asked to provide a date of MMI.

In a March 6, 2020 report, the DMA reviewed the case file and determined that appellant had reached MMI on February 3, 2020. He disagreed with Dr. White's right knee permanent impairment rating and found that appellant had a class 1 full-thickness articular cartilage defect or ununited osteochondral fracture with a default value of 3 percent not 10 percent[9] as found by Dr. White. The DMA determined that appellant GMFH was 1, GMPE was 2, and that GMCS was not applicable.[10] Applying the net adjustment formula, he calculated +1 or 4 percent permanent impairment of the right lower extremity.[11] The DMA found that in order to qualify for 10 percent

[2] A.M.A., *Guides*, 6th ed. (2009).

[3] *Id.* at 511, Table 16-3.

[4] *Id.* at 516, Table 16-6, 517, Table 16-7, and 519, Table 16-8.

[5] *Id.* at 521.

[6] *Id.* at 549, 552

[7] *Id.* at 509.

[8] *Supra* notes 4 and 5.

[9] *Id.* at 511, Table 16-3.

[10] *Id.* at 516, Table 16-6, 517, Table 16-7, and 519, Table 16-8.

[11] *Id.* at 521.

right lower extremity for patellofemoral arthritis, x-rays demonstrating a two millimeter cartilage interval must be documented.[12] He was unable to locate any specific plain radiograph interpretation indicating loss of articular cartilage down to 2 millimeter thickness in the patellofemoral joint and for this reason used the lower impairment for articular cartilage defect. The DMA agreed with Dr. Katz' assessment of the left lower extremity and also reached a permanent impairment rating of 1 percent. He found that appellant reached MMI on February 3, 2020, the date of Dr. White's examination. The DMA noted that appellant's conditions were not eligible for alternative ROM impairment calculations based on the directions of the A.M.A., *Guides*.

On April 1, 2020 OWCP requested a supplemental report from Dr. White. On April 23, 2020 Dr. White provided an addendum reviewing the DMA's application of the A.M.A., *Guides* to his January 3, 2020 findings. He noted that upon review of his examination findings as well as the medical records, he agreed with the DMA's impairment rating of four percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity.

On May 26, 2020 OWCP referred Dr. White's April 23, 2020 report to the DMA. In a June 8, 2020 report, the DMA reviewed the April 23, 20202 addendum and found that Dr. White and he agreed on appellant's permanent impairment ratings.

By decision dated July 8, 2020, OWCP granted appellant a schedule award for one percent permanent impairment of his left lower extremity and four percent permanent impairment of his right lower extremity.

LEGAL PRECEDENT

The schedule award provisions of FECA[13] and its implementing regulations[14] 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 of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, good administrative practice necessitates 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.[15] The Board has approved the use by OWCP

[12] *Supra* note 9.

[13] *Supra* note 1.

[14] 20 C.F.R. § 10.404.

[15] 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 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

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.[16]

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).[17] Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.[18] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[19] Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[20]

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 impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[21]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish more than one percent permanent impairment of his left lower extremity and four percent permanent impairment of his right lower extremity for which he has previously received a schedule award.

Appellant filed a schedule award claim and OWCP referred him for a second opinion evaluation with Dr. White. In January 3 and April 23, 2020 reports, Dr. White reviewed appellant's history of injury and diagnosed post-traumatic arthritis of the right knee, as well as left knee strain with posterior horn and medial meniscus tear. He found that appellant was at MMI. Utilizing Table 16-3, pages 509 and 511, Dr. White found that appellant had class 1 grade D patellofemoral arthritis in the right lower extremity and class 1 grade A meniscal injury in the left lower extremity.

OWCP properly referred the evidence of record to a DMA. In his March 6, and June 8, 2020 reports, Dr. Katz concurred with Dr. White's finding that appellant had four percent permanent impairment of his right lower extremity and one percent permanent impairment of his left lower extremity pursuant to the sixth edition of the A.M.A., *Guides*.

[16] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[17] A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3, International Classification of Functioning, Disability, and Health (ICF): A Contemporary Model of Disablement.

[18] *Id.* at 494-531.

[19] *Id.* at 411.

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

[21] *See supra* note 15 at Chapter 2.808.6(f) (March 2017).

The Board finds that OWCP properly determined that the clinical findings and reports of Dr. White and the DMA constituted the weight of the medical evidence.[22] There is no probative medical evidence of record demonstrating greater impairment than that previously awarded.[23] Therefore, appellant has not met his burden of proof to establish an increased schedule award.

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 more than one percent permanent impairment of his left lower extremity and four percent permanent impairment of his right lower extremity for which he has previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 2021
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

[22] *D.L.*, Docket No. 20-1016 (issued December 8, 2020); *K.M.*, Docket No. 19-1526 (issued January 22, 2020); *Y.S.*, Docket No. 19-0218 (issued May 15, 2020).

[23] *Id.; J.M.*, Docket No. 18-1334 (issued March 7, 2019).