

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On March 30, 2007 appellant, then a 44-year-old patient services assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date he twisted his left knee when catching his balance on a slippery floor while in the performance of duty. OWCP assigned the claim File No. xxxxxx309 and accepted it for sprain of the lateral collateral ligament of the left knee and tear of the left knee medial meniscus.

On January 23, 2008 appellant underwent a left knee arthroscopy with intra-articular debridement of extensive scarification, chondroplasty of medial femoral condyle and synovectomy. The procedure was performed by Dr. Phillip Davidson, a Board-certified orthopedic surgeon.

A February 18, 2011 magnetic resonance imaging (MRI) scan of appellant's left knee interpreted by Dr. Gagandeep Mangat, Board-certified in radiology, revealed a bone contusion involving the medial femoral condyle with what appeared to be a partial tear of the medial collateral ligament.

On March 3, 2011 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In an April 15, 2011 report, Dr. Michael Smith, a Board-certified orthopedic surgeon, indicated that appellant presented with knee pain. He conducted a physical examination of appellant's left knee, which revealed a range of motion from 0 to 120 degrees and otherwise normal results. Dr. Smith stated that appellant reached maximum medical improvement (MMI) and had sustained six percent permanent impairment of the left lower extremity.

A May 5, 2011 report by Dr. James W. Dyer, a Board-certified orthopedic surgeon serving as OWCP's district medical adviser (DMA), reviewed appellant's surgical history and indicated that he had residual left knee pain with a range of motion of 0 to 120 degrees. Dr. Dyer indicated that appellant reached MMI on April 15, 2011 and noted that Dr. Smith had used Florida State guidelines to calculate appellant's permanent impairment rating, which OWCP did not accept. Using the diagnosis-based method (DBI) of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),³ he listed appellant's principle diagnosis as sprain/tear of the collateral ligament with full thickness articular cartilage defect and assigned class of diagnosis (CDX) 1. Dr. Dyer assigned a grade modifier for functional history (GMFH) of 1, a grade modifier for physical examination (GMPE) of 0, and a grade

² *Order Remanding Case*, Docket No. 19-1942 (issued April 30, 2020).

³ A.M.A., *Guides* (6th ed. 2009).

modifier for clinical studies (GMCS) of 1, and he calculated that appellant had a grade B, six percent permanent impairment of the left lower extremity.⁴

By decision dated May 24, 2011, OWCP granted appellant a schedule award for six percent permanent impairment of the left lower extremity (leg). The award ran for 17.28 weeks from April 15 to August 13, 2011.

On July 3, 2018 appellant filed another traumatic injury claim (Form CA-1) alleging that on February 14, 2018 he injured his left knee when he turned to stand up from his desk and his chair rolled out from under him, causing him to lose his balance and slip in the performance of duty. OWCP assigned the claim File No. xxxxxx661 and accepted the claim for aggravation of derangement of other medial meniscus due to a prior tear or injury of the left knee. On November 28, 2018 appellant underwent a left knee arthroscopy, arthroscopic patellar shaving, arthroscopic partial medial meniscectomy, and arthroscopic removal of multiple loose bodies.

On February 8, 2019 appellant filed a Form CA-7 claim for an increased schedule award.

In a development letter dated February 13, 2019, OWCP informed appellant that additional evidence was necessary to establish his claim. It advised him that he should submit a detailed report from his treating physician, which described any permanent impairment which preexisted this injury. OWCP also informed appellant that he should submit a final rating of his permanent impairment, under the A.M.A., *Guides*. It afforded appellant 30 days to submit the necessary evidence.

A March 6, 2019 report by Dr. Smith indicated that appellant reached MMI on February 7, 2019. Dr. Smith related that he based his impairment rating on the diagnosis of medial meniscus tear of the left knee with traumatic loose bodies, with arthroscopy of the medial meniscectomy and excision of loose bodies. He opined that, according to the A.M.A., *Guides*, appellant sustained four percent permanent impairment. Dr. Smith additionally noted that appellant had no restrictions due to his knee condition.

In a March 28, 2019 report, Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as OWCP's DMA, indicated that he reviewed the statement of accepted facts (SOAF) and appellant's medical records. He noted appellant's February 14, 2018 employment injury and the accepted diagnosis of an old left knee medial meniscus tear. Dr. Katz opined that he could not determine appellant's percentage of permanent impairment or MMI because Dr. Smith's March 6, 2019 report was incomplete.

OWCP prepared an April 18, 2019 SOAF in which it noted the history of appellant's February 14, 2018 employment injury. It related that his claim was accepted for aggravation of derangement of other medial meniscus due to an old tear of the left knee and that he underwent left knee arthroscopy surgery. The SOAF also provided details regarding appellant's subsequent work history.

⁴ Pursuant to Table 16-3, the Knee Regional Grid at page 510 of the A.M.A., *Guides*, a cruciate or collateral ligament injury with mild laxity would be rated as a 7 to 13 percent permanent impairment.

In a May 22, 2019 report, Dr. Patrick Horan, a Board-certified orthopedic surgeon serving as OWCP's second opinion examiner, reviewed appellant's SOAF, history of injury, and medical records. He conducted a physical examination and noted that appellant walked with an antalgic gait with a slight short-legged stance, had a bilateral knee range of motion of 0 to 115 degrees, and had left knee tenderness at the medial joint line and a positive Lachman test. Dr. Horan opined that appellant was status post medial meniscal tear that had been debrided. He stated that he agreed with the previous MMI assessment, and that he would use the DBI method of the A.M.A., *Guides* to rate appellant's permanent impairment because appellant's knees had symmetrical range of motion. Using the DBI method, Dr. Horan selected the diagnosis of a meniscal injury, and he assigned CDX 1 because appellant had undergone a partial medial meniscectomy. He assigned a GMPE of 1 because appellant's knee was stable and because of minimal palpatory findings, and he assigned a GMFH of 1 because he had an antalgic limp, but did not routinely use a cane. Dr. Horan related that he did not assign a GMCS because appellant's MRI scan findings were used to determine his diagnosis. He calculated that appellant sustained two percent permanent impairment of the left lower extremity.

In a July 1, 2019 DMA report, Dr. Katz indicated that he reviewed appellant's SOAF and medical records. He related that appellant was injured at work on February 14, 2018 and OWCP accepted the condition of derangement of other medial meniscus due to an old tear or injury of the left knee. Dr. Katz stated that he was given Dr. Horan's May 22, 2019 impairment evaluation for review. Using the DBI method of the A.M.A., *Guides*, he selected the diagnosis of partial medial meniscectomy, and he indicated that, based on a review of the records, he assigned a GMFH of 1, a GMPE of 1, and no GMCS. Dr. Katz calculated that appellant had a total of two percent permanent impairment of his left lower extremity. He also noted that the range of motion (ROM) impairment evaluation methodology was not applicable.

On July 9, 2019 OWCP requested clarification from Dr. Katz and informed him that appellant had previously been granted a schedule award of six percent permanent impairment of the left lower extremity under OWCP File No. xxxxxx309. In addressing appellant's current permanent impairment, Dr. Katz was asked to stipulate whether appellant's current permanent impairment should be considered in addition to the previous award.

On July 14, 2019 Dr. Katz requested that OWCP provide the prior DMA's report from OWCP File No. xxxxxx309, which was the basis of the prior six percent schedule award. It forwarded the requested report to Dr. Katz on July 19, 2019.

In a July 26, 2019 report, Dr. Katz indicated that he reviewed appellant's SOAF and medical records. He related that appellant was injured at work on February 14, 2018 and OWCP accepted the condition of derangement of other medial meniscus due to an old tear or injury of the left knee. Dr. Katz additionally noted that appellant was previously granted a schedule award for six percent permanent impairment of his left lower extremity, which was based on Dr. Dyer's May 5, 2011 DMA report. Dr. Katz stated that he was given Dr. Horan's May 22, 2019 impairment evaluation for review. Using the DBI method of the A.M.A., *Guides*, Dr. Horan selected the diagnosis of partial medial meniscectomy and assigned a GMFH of 1, a GMPE of 1, and no GMCS. Dr. Katz calculated a total two percent permanent impairment of appellant's left lower extremity, and he stated that the ROM impairment evaluation methodology was not applicable. He opined that, since two percent was less than the previous overlapping award for six percent permanent

impairment of the left lower extremity, appellant should not be granted an increased schedule award.

By decision dated July 31, 2019, OWCP denied appellant's claim for an increased schedule award, finding that the medical evidence of record was insufficient to support an increase in permanent impairment beyond the previous award for six percent permanent impairment of the left lower extremity under OWCP File No. xxxxxx309.

On September 19, 2019 appellant filed an appeal with the Board. By order dated April 30, 2020, the Board found that the DMA's May 5, 2011 report did not provide sufficient detail explaining the basis of the permanent impairment rating and that the record before the Board did not contain all of the relevant impairment rating medical reports under OWCP File No. xxxxxx309. The Board explained that simply comparing the prior percentage of permanent impairment awarded to the current impairment for the same member was not sufficient to deny an increased schedule award claim, as the issue is not whether the current permanent impairment rating was greater than the prior impairment ratings, but whether it duplicated in whole or in part the prior impairment rating. The Board remanded the case to OWCP to administratively combine the case records for File Nos. xxxxxx661 and xxxxxx309 and, following any development deemed necessary, issue a *de novo* decision on appellant's schedule award claim.⁵

OWCP administratively combined the case records for File Nos. xxxxxx661 and xxxxxx309, with File No. xxxxxx661 serving as the master file.

On July 28, 2020 OWCP requested that Dr. Katz review the combined case record and determine whether appellant was entitled to any additional schedule award. Dr. Katz was further requested to provide his rating and rationale. OWCP again related that, in providing the current impairment rating, Dr. Katz should address whether the percentage of impairment included the prior percentage awarded, or if it should be considered in addition to the prior award.

In an August 7, 2020 report, Dr. Katz indicated that he reviewed the SOAF and appellant's medical records. He related that appellant was injured at work on February 14, 2018 and OWCP accepted his claim for derangement of other medial meniscus due to an old tear or injury of the left knee. Dr. Katz noted that, in his July 16, 2019 report, he had agreed with Dr. Horan's impairment evaluation of two percent permanent impairment of the left lower extremity, and he recommended that, since two percent left lower extremity award did not exceed the prior, overlapping award of six percent permanent impairment of the left lower extremity, no additional award was due for the left lower extremity. He stated that, upon review of the records, the prior award for a permanent impairment of six percent of the left lower extremity based on Dr. Dyer's May 5, 2011 report overlapped with Dr. Horan's two percent impairment evaluation and, therefore, he again did not recommend any additional award.

By decision dated August 18, 2020, OWCP denied appellant's claim for an increased schedule award, finding that the medical evidence of record was insufficient to establish permanent impairment greater than what was already paid.

⁵ *Supra* note 3.

LEGAL PRECEDENT

The schedule award provisions of FECA and its implementing regulations 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.⁶ 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. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁷ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁸

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 509.⁹ After the CDX is determined from the Knee Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

On July 28, 2020 OWCP administratively combined the case records pertaining to appellant's left knee injuries and requested that Dr. Katz review the combined case record and determine whether appellant was entitled to any additional schedule award. It requested that Dr. Katz provide rationale in support of his rating, and again explained that he should explain whether appellant's current permanent impairment included the prior impairment, or whether it was in addition to the prior award.

Dr. Katz, in his August 7, 2020 report, indicated that he reviewed appellant's SOAF and his medical records. He stated that appellant was injured at work on February 14, 2018 and that OWCP accepted this claim for derangement of other medial meniscus due to an old tear or injury of the left knee. Dr. Katz did not specifically reference permanent impairment findings from appellant's prior claim in OWCP File No. xxxxxx309 and he did not acknowledge that the prior

⁶ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

⁷ 20 C.F.R. § 10.404; *E.S.*, Docket No. 20-0559 (issued October 29, 2020); *see also Ronald R. Kraynak*, 53 ECAB 130 (2001).

⁸ *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (March 2017).

⁹ *Supra* note 4 at 509-11.

¹⁰ *Id.* at 515-22

award was based on a diagnosis of sprain/tear of the collateral ligament with full thickness articular cartilage defect. He also did not provide a new permanent impairment rating. Instead, Dr. Katz referenced his July 2019 report, and related that he had previously explained that the prior six percent schedule award overlapped the most recent impairment determination by Dr. Horan and, therefore, since the prior award exceeded the most recent impairment and no additional award was recommended.

Dr. Katz did not explain how his two percent left lower extremity impairment rating “overlapped” with the previous six percent left lower extremity impairment schedule award, as he did not reference Dr. Dyer’s diagnosis, findings or calculations. The Board notes that a claimant is not precluded from an additional schedule award solely because he or she received a greater award to the same scheduled member from another claim.¹¹ The Board has previously held that simply comparing the prior percentage of permanent impairment awarded to the current impairment for the same member is not always sufficient to deny an increased schedule award claim.¹² The issue is not whether the current permanent impairment rating is greater than the prior impairment ratings, but whether it duplicates in whole or in part the prior impairment rating.¹³ In reaffirming his prior reports, Dr. Katz, in his August 10, 2020 report, again compared the percentage of permanent impairment from appellant’s prior award to his current impairment percentage, and noted that they overlapped, but he offered no explanation as to whether appellant’s current permanent impairment was, in fact, the same permanent impairment for which appellant had received the prior award.

As Dr. Katz has been unable to clarify his findings, the case shall be remanded to OWCP for referral of the case record and an updated SOAF to a new DMA. The DMA shall provide a reasoned opinion regarding the extent of appellant’s permanent impairment of his left lower extremity, clearly explaining whether the different diagnoses from appellant’s accepted employment injuries justify separate permanent impairment ratings, or whether the injuries have resulted in a duplicative permanent impairment. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹¹ *D.S.*, Docket No. 19-1514 (issued October 21, 2020).

¹² *Id.*

¹³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 20, 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