United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 21-0434**
	)	**Issued: August 16, 2022**
DEPARTMENT OF JUSTICE, U.S. MARSHALS SERVICE, Charlotte, NC, 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, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 28, 2021 appellant filed a timely appeal from a December 9, 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.

ISSUE

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

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On February 21, 2019 appellant, then a 45-year-old federal marshal, filed a traumatic injury claim (Form CA-1) alleging that on February 14, 2019 he twisted his left knee while jogging during agency-approved training while in the performance of duty. He did not stop work.

Magnetic resonance imaging (MRI) scans of the left knee dated May 6, 2019 revealed a tear of the medial meniscus; probable sprain or partial tear of the posterior medial meniscocapsular junction; joint effusion; grade II to III chondromalacia of the patellofemoral joint with small osteochondral abnormalities; and extensor tendinosis consistent with repetitive stress of the patella or an old injury. By decision dated July 5, 2019, OWCP accepted the claim for tear of the medial meniscus and sprain of the medial collateral ligament of the left knee.

On October 15, 2019 Dr. Dana Piasecki, a Board-certified orthopedic surgeon, performed a left knee arthroscopy and partial meniscectomy. In the operative report, he documented a diagnosis of left knee medial meniscus tear, and further noted that appellant demonstrated approximately 50 percent of normal meniscal function pre- and postoperatively.

In a February 4, 2020 follow-up note, Dr. Piasecki indicated that he had released appellant to return to full-duty work effective January 2020, but that he reported ongoing medial and anterior left knee pain with patellofemoral stress-type activities. Physical examination demonstrated full extension and flexion with no effusion, meniscal pathology, or medial joint line tenderness. Dr. Piasecki determined that appellant had reached maximum medical improvement (MMI), and that he had five percent permanent impairment of the left lower extremity under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[2]

On February 25, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By letter dated February 27, 2020, OWCP requested that Dr. Piasecki provide a report including a rationale for his calculation based upon the applicable criteria and/or tables in the A.M.A., *Guides*. Dr. Piasecki did not respond.

On April 30, 2020 OWCP referred Dr. Piasecki's February 4, 2020 report and the case record to Dr. Arthur S. Harris, 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. Harris was also asked by OWCP to provide a date of MMI.

In a May 7, 2020 report, Dr. Harris indicated that he had reviewed the case file, including the statement of accepted facts (SOAF), and determined that appellant had reached MMI on February 4, 2020, the date of Dr. Piasecki's report. He applied Table 16-3 (Knee Regional Grid), page 509 of the sixth edition of the A.M.A., *Guides* and identified the class of diagnosis (CDX) of

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

meniscal injury as the diagnosis-based impairment (DBI), class 1 with a default value of two percent for partial medial meniscectomy.[3]

By decision dated August 18, 2020, OWCP granted appellant a schedule award for two percent permanent impairment of the left lower extremity. The date of MMI was found to be February 4, 2020. The award covered a period of 5.76 weeks from February 4, 2020 to March 15, 2020. OWCP noted that the weight of the medical evidence rested with Dr. Harris as the DMA, who properly applied the A.M.A., *Guides* to Dr. Piasecki's February 4, 2020 examination findings.

On October 14, 2020 appellant requested reconsideration of the August 18, 2020 decision. In support of the request, he submitted a September 22, 2020 addendum report by Dr. Piasecki indicating that his 5 percent rating was determined based on a significant loss of meniscal function as a result of the meniscal tear and 50 percent meniscectomy. Dr. Piasecki further explained that he relied upon the loss of meniscus as a result of the procedure, his medical evaluations, and his personal inspection of the joint at the time of surgery, in reaching his conclusions. He stated that in his medical judgment, appellant's degree of impairment represented "the lower end of a total meniscectomy as opposed to a middle degree of impairment from a partial meniscectomy."

By letter dated October 22, 2020, OWCP requested that Dr. Harris review the SOAF and Dr. Piasecki's September 22, 2020 addendum. It further requested that he provide a supplemental report, including a rationalized medical opinion as to whether or not he concurred with Dr. Piasecki's opinion that appellant's impairment should be based upon the lower end of a total meniscectomy versus a middle degree of impairment. It noted that the accepted conditions included tear of medial meniscus and sprain of the medial collateral ligament of the left knee.

In a supplemental report dated October 27, 2020, Dr. Harris outlined his review of the SOAF and Dr. Piasecki's September 22, 2020 report. He opined that a five percent lower extremity rating was not consistent with the A.M.A., *Guides*, and explained that the 50 percent partial medial meniscectomy only resulted in two percent lower extremity impairment based upon Table 16-3, page 509, as the condition was consistent with a "CDX 1C" based upon the reviewed information.

By decision dated December 9, 2020, OWCP denied modification of its August 18, 2020 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA[4] and its implementing regulations[5] 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

[3] *Id*. at 509, Table 16-3.

[4] *Supra* note 1.

[5] 20 C.F.R. § 10.404.

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. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[6] For schedule awards issued after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.[7]

It is the claimant's burden of proof to establish permanent impairment of the scheduled member or function of the body as a result of an employment injury.[8] OWCP's procedures provide that, to support a schedule award, the file must contain competent medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.[9]

In addressing lower extremity impairments, the sixth edition requires identification of the impairment CDX, which is then adjusted by a grade modifier functional history (GMFH), a grade modifier for physical examination (GMPE), and/or a grade modifier for clinical studies (GMCS).[10] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[11]

In some instances, a DMA's opinion can constitute the weight of the medical evidence.[12] This occurs in schedule award cases where an opinion on the percentage of permanent impairment and a description of physical findings is on file from an examining physician, but the percentage estimate by this physician is not based on the A.M.A., *Guides*.[13] In this instance, a detailed opinion by a DMA may constitute the weight of the medical evidence as long as he or she explains his or her opinion, shows values and computation of impairment based on the A.M.A., *Guides*, and considers each of the reported findings of impairment.[14]

---

[6] *Id*.; *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[8] *E.D.*, Docket No. 19-1562 (issued March 3, 2020); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

[9] *Supra* note 7 at Chapter 2.808.5 (March 2017).

[10] A.M.A., *Guides* 383-492.

[11] *Id*. at 497.

[12] *M.G.*, Docket No. 20-0078 (issued December 22, 2020); *R.R.*, Docket No. 19-1314 (issued January3, 2020); *J.H.*, Docket No. 18-1207 (issued June 20, 2019); *M.P.*, Docket No. 14-1602 (issued January 13, 2015); *supra* note 7 at Chapter 2.810.8j (September 2010).

[13] *Id*.

[14] *Id*.

ANALYSIS

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

In support of his claim for a schedule award, appellant submitted February 4 and September 22, 2020 reports from Dr. Piasecki in which he found that appellant had five percent left lower extremity permanent impairment. He noted a diagnosis of left medial meniscus tear status post partial medial meniscectomy, which he opined should be rated under the lower end of a total meniscectomy *versus* a middle degree of impairment. Dr. Piasecki did not, however, cite to any specific authority within the A.M.A., *Guides* in support of his opinion.

In accordance with its procedures, OWCP properly referred the evidence of record, along with a SOAF, to Dr. Harris. In May 7 and October 27, 2020 reports, utilizing Table 16-3, page 509 of the A.M.A., *Guides*, Dr. Harris found that the most appropriate diagnosis for rating purposes was a partial medial meniscectomy, a documented injury with residual findings, which was a Class 1 with a default value of two percent. He did not, however, review the May 6, 2019 MRI scan results, note any grade modifiers, or apply the net adjustment formula consistent with the sixth edition of the A.M.A., *Guides*. Therefore, the Board finds that Dr. Harris' report is insufficient to constitute the weight of the evidence.[15]

It is well established that proceedings under FECA are not adversarial in nature, and while the employee has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[16] Once OWCP undertook development of the evidence by referring appellant's case file to an OWCP medical adviser, it had an obligation to do a complete job and obtain a proper evaluation and a report that would resolve the issue in this case.[17] The Board will therefore set aside OWCP's December 9, 2020 decision and remand the case for the DMA to conduct a proper analysis under the A.M.A., *Guides* in order to determine if appellant had greater than two percent permanent impairment of his left lower extremity. After 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 a decision.

[15] *Supra* note 10.

[16] *See W.W.*, Docket No. 18-0093 (issued October 9, 2018); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[17] *See* 5 U.S.C. § 8101(19); *J.K.*, Docket Nos. 19-1420 & 19-1422 (issued August 12, 2020); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2020 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: August 16, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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