

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

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<b>E.W., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 21-0118</b>
	)	<b>Issued: July 7, 2022</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Detroit, MI, Employer</b>	)	
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*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant*<sup>1</sup>  
*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 November 4, 2020 appellant, through counsel, filed a timely appeal from an August 19, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

## FACTUAL HISTORY

On September 2, 2015 appellant, then a 68-year-old training technician, filed a traumatic injury claim (Form CA-1) alleging that on August 31, 2015 she strained her left knee and leg when she fell in a hallway while in the performance of duty. She stopped work on August 31, 2015 and returned to part-time modified employment on February 1, 2016. OWCP accepted the claim for unspecified lateral meniscus derangements of the left knee and left knee sprain.

A September 11, 2015 magnetic resonance imaging (MRI) scan of the left knee demonstrated fraying of the lateral and medial meniscus without a discrete tear and edema of the anterior cruciate ligament, which was either degenerative or post traumatic.

In a March 22, 2016 report, Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon and OWCP referral physician, diagnosed a resolved soft tissue injury of the left knee. He found that appellant could return to her date-of-injury employment without restrictions.

An MRI scan obtained March 22, 2016 revealed near full-thickness cartilage loss and subchondral edema within the patellofemoral compartment and intact menisci and ligaments.

On May 18, 2016 Dr. Jeffrey H. DeClaire, a Board-certified orthopedic surgeon, performed a left knee chondroplasty of the patellofemoral joint, major synovectomy, and resection of fibrotic medial plica.

In an addendum report dated December 7, 2016, Dr. Obianwu opined that the August 31, 2015 employment injury had not aggravated or accelerated appellant's left knee osteoarthritis. He further found that the May 18, 2016 surgery was unrelated to the accepted employment injury.

In a report dated March 2, 2017, Dr. DeClaire opined that appellant's employment injury had permanently accelerated her preexisting knee arthritis. He advised that she was scheduled for patellofemoral joint replacement on March 27, 2017 and attributed her need for surgery to her employment injury.

OWCP determined that a conflict in medical opinion existed between Dr. Obianwu and Dr. DeClaire and referred appellant to Dr. Paul Drouillard, an osteopath and Board-certified orthopedic surgeon, for an impartial medical examination. It requested that Dr. Drouillard address appellant's current employment-related condition and disability, whether the May 18, 2016 surgery was necessary and causally related to the accepted employment injury, and whether she required continued treatment, including the proposed left knee replacement.

In a report dated May 22, 2017, Dr. Drouillard diagnosed seven weeks post a left total knee arthroplasty due to nonemployment-related degenerative joint disease, right knee degenerative joint disease, and narcotic habituation. He found that appellant's left knee condition had resulted from a degenerative condition. Dr. Drouillard opined that she had no residuals from the accepted

August 31, 2015 left knee derangement, which he indicated was “more accurately described as a contusion.” He related that appellant’s May 8, 2016 surgery was not warranted and that she had undergone a knee replacement due to “[appellant’s] degenerative process.” Dr. Drouillard found that she could resume her usual employment.

By decision dated July 26, 2018, OWCP, based on Dr. Drouillard’s opinion, terminated appellant’s wage-loss compensation and medical benefits, effective that date, as the weight of the evidence established that she had no further employment-related disability or need for further medical treatment due to her left knee internal derangement and left knee sprain.<sup>3</sup>

On August 1, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review. By decision dated January 14, 2019, OWCP’s hearing representative affirmed the July 26, 2018 decision.<sup>4</sup>

In an impairment evaluation dated May 23, 2019, Dr. Sami E. Moufawad, a Board-certified physiatrist, discussed appellant’s history of an August 31, 2015 employment injury and subsequent February 2016 knee arthroscopy and March 2017 total knee replacement. Referencing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>5</sup> he identified the class of diagnosis (CDX) as a total knee replacement with a fair result using Table 16-3 on page 511. After applying grade modifiers, Dr. Moufawad opined that appellant had 31 percent permanent impairment of the left lower extremity.

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

On August 8, 2019 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), diagnosed status post left knee arthroscopic chondroplasty, synovectomy, and resection of medial plica on May 18, 2016 and status post left knee arthroplasty on March 27, 2017. He concurred with Dr. Moufawad’s finding of 31 percent permanent impairment of the left lower extremity.

On September 26, 2019 OWCP requested that Dr. Moufawad provide an addendum report clarifying whether appellant had a permanent impairment due to her accepted conditions of left knee lateral meniscus derangement and a sprain of the lateral collateral ligament of the left knee. It noted that Dr. Drouillard had provided an impartial medical opinion, finding that her knee problems that caused her need for surgery were degenerative rather than traumatic in origin. OWCP requested that Dr. Moufawad explain whether appellant’s arthritic condition was caused or aggravated by her accepted employment injury.

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<sup>3</sup> The record reflects that the International Classification of Disease (ICD)-10 code was left knee derangement and the ICD-9 code was a sprain of the lateral collateral ligament.

<sup>4</sup> By decision dated May 30, 2019, OWCP denied appellant’s claims for compensation (Form CA-7) beginning May 18, 2019.

<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

In an October 10, 2019 addendum report, Dr. Moufawad advised that appellant had preexisting left knee osteoarthritis at the time of her August 31, 2015 employment injury, accepted for left knee sprain. He asserted that the employment injury had aggravated and accelerated her left knee osteoarthritis and resulted in her need for a total knee replacement. Dr. Moufawad noted that, prior to her injury, appellant engaged in dancing, riding a bicycle, and walking. He indicated that the sudden loss of her ability to participate in these activities supported that she had sustained an aggravation of preexisting degenerative changes due to her August 31, 2015 employment injury. Dr. Moufawad reiterated that appellant had 31 percent permanent impairment due to her total knee replacement, which was causally related to the August 31, 2015 employment injury.

On January 30, 2020 Dr. Harris maintained that appellant had a 31 percent permanent impairment of the lower left extremity due to permanent aggravation of the preexisting symptomatic arthritis. However, he clarified that appellant had no impairment due to her accepted conditions of left knee derangement and a left knee sprain.

By decision dated February 7, 2020, OWCP denied appellant's schedule award claim.

On February 19, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on June 1, 2020.

By decision dated August 19, 2020, OWCP's hearing representative affirmed the February 7, 2020 decision.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>6</sup> and its implementing federal regulations,<sup>7</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. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized 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.<sup>8</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>9</sup>

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6<sup>th</sup> ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also id.* at Chapter 3.700, Exhibit 1 (January 2010).

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

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.<sup>10</sup> For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.<sup>11</sup>

OWCP's procedures provide that termination of a claim for all benefits due to a finding of no residuals of work-related condition does not automatically bar a subsequent schedule award. Rather, it should consider the schedule award matter separately from the termination of benefits. If a claimant applies for a schedule award after termination, and submits medical evidence reflecting permanent impairment as a result of the work-related injury or exposure, OWCP should develop the claim further, even if a finding of no residuals has previously been made.<sup>12</sup>

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.<sup>13</sup> This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>14</sup> When there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>15</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

In support of her claim for a schedule award, appellant submitted a May 23, 2019 impairment evaluation from Dr. Moufawad, who found that she had 31 percent permanent impairment of the left lower extremity due to her total knee replacement, pursuant to Table 16-3 on page 511 of the A.M.A., *Guides*. OWCP, however, did not authorize her total knee replacement as causally related to her August 31, 2015 employment injury. It accepted appellant's claim only for left knee derangement and a left knee sprain.

OWCP properly referred the case record to Dr. Harris, the DMA. In an August 8, 2019 report, Dr. Harris diagnosed status post left knee arthroscopic chondroplasty, synovectomy, and

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<sup>10</sup> *K.B.*, Docket No. 19-0431 (issued July 1, 2019); *Veronica Williams*, 56 ECAB 367 (2005).

<sup>11</sup> *F.E.*, Docket No. 17-0584 (issued December 18, 2017).

<sup>12</sup> *See also supra* note 8 Chapter 2.808.11 (February 2013).

<sup>13</sup> 5 U.S.C. § 8123(a); *K.W.*, Docket No. 20-0047 (issued November 12, 2020).

<sup>14</sup> 20 C.F.R. § 10.321.

<sup>15</sup> *V.H.*, Docket No. 20-0012 (issued November 5, 2020); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

resection of medial plica on May 18, 2016 and status post left knee arthroplasty on March 27, 2017. He concurred with Dr. Moufawad's finding of 31 percent permanent impairment of the left lower extremity. In a January 30, 2020 supplemental report, Dr. Harris maintained that appellant had 31 percent permanent impairment of the lower left extremity due to permanent aggravation of the preexisting symptomatic arthritis, but clarified that appellant had no impairment due to her accepted conditions of left knee derangement and a left knee sprain.

Dr. Harris properly applied the appropriate standards of the A.M.A., *Guides* in finding no impairment due to the accepted conditions. As the DMA's opinion is also detailed, well rationalized, and based on a proper factual background, the Board finds that it constitutes the weight of the medical evidence.

As the medical evidence of record is insufficient to establish permanent impairment of a scheduled member or function of the body causally related to the accepted employment injury, the Board finds that appellant has not met her burden of proof.

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 permanent impairment of a scheduled member or function of the body, warranting a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 19, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 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