United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 21-0787**
	)	**Issued: June 21, 2022**
U.S. POSTAL SERVICE, OAKLAND PROCESSING & DISTRIBUTION CENTER, Oakland, CA, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 26, 2021 appellant filed a timely appeal from a November 19, 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.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than 25 percent permanent impairment of the right lower extremity and greater than 25 percent permanent

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the November 19, 2020 decision and on appeal, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

impairment of the left lower extremity for which she previously received schedule award compensation.

FACTUAL HISTORY

On April 6, 1998 appellant, then a 47-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she injured her right wrist and right lower extremity when she jumped from the back of a mail truck onto a loading dock while in the performance of duty.

OWCP accepted appellant's claim forclosed fracture of the right fibula shaft; tenosynovitis of the right hand and wrist; bilateral wrist sprain; tear of lateral meniscus of the left knee; bilateral synovitis and tenosynovitis; right knee tear of the medial meniscus of the right knee; closed fracture of the right ankle; and bilateral osteoarthritis of the knees.

On May 22, 1998 appellant underwent an open reduction and internal fixation of the right tibia fracture. On January 19, 2000 she underwent a removal of hardware from the right proximal tibia. On December 19, 2001 appellant underwent a right knee meniscectomy of the medial and lateral menisci, synovectomy, and chondroplasty of the patellofemoral and lateral femoral compartments. On September 18, 2002 she underwent an additional excision of an osteophyte formation over the anterior right tibia, repair of a complex lateral meniscus tear, repair of a tear of the lateral collateral and fibular collateral ligaments, and proximal tibia ostectomy. On October 5, 2005 appellant underwent a left knee arthroscopy and synovectomy for lateral meniscal tear. On September 12, 2007 she underwent a right total knee arthroplasty and correction of valgus. On October 9, 2018 appellant underwent a left total knee arthroplasty.

By decision dated October 30, 2000, OWCP granted appellant a schedule award for three percent permanent impairment of the right lower extremity. By decision dated May 7, 2013, it granted her a schedule award for 9 percent permanent impairment of the right upper extremity and 0 percent permanent impairment of the left upper extremity, 40 percent impairment of the right lower extremity (43 percent current, with 3 percent previously paid), and 7 percent permanent impairment of the left lower extremity.

In July 11 and 23, 2019 reports, Dr. John H. Welborn, Jr., Board-certified in orthopedic surgery, noted that he saw appellant for follow up. He found that her knees were stable, with no tenderness and no swelling, that both had 120 degrees of active flexion and 0 degrees active extension. Dr. Welborn concluded that both knees had improved following total knee replacements.

On September 13, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In support of her claim, appellant submitted an October 7, 2019 report from Dr. Welbom. Dr. Welborn provided a history of her injury and medical treatment. He provided examination findings relating to appellant's left knee, relating that appellant had 110 degrees of flexion and 0 degrees of extension. Dr. Welborn noted that she had undergone a knee replacement on the left, and he found that she had left knee degenerative joint disease with limited motion and joint pain. He referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of*

Permanent Impairment (A.M.A., *Guides*),[3] Table 16-3, page 511, Knee Regional Grid -- Lower Extremity Impairments, and opined that appellant had a fair result from her left total knee replacement, the class of diagnosis (CDX), which is the equivalent of a Class 3, 37 percent left lower extremity permanent impairment.

In a January 13, 2020 report, Dr. Welborn noted that appellant had undergone bilateral knee replacements, both of which were stable. He related that both knees had 120 degrees of flexion. Dr. Welborn opined that appellant had attained maximum medical improvement (MMI) as of July 11, 2019. He referred to the fifth edition of the A.M.A., *Guides*,[4] Table 17-33, page 547, and opined that she had a fair result for her left knee replacement with a 20 percent whole person impairment.

On June 22, 2020 OWCP advised appellant that her case was referred to a district medical adviser (DMA) for review of the medical evidence and the October 7, 2019 report from Dr. Welborn.

OWCP forwarded Dr. Welborn's July 23 and October 7, 2019 reports, the medical record, and statement of accepted facts (SOAF) to Dr. Michael M. Katz, a Board-certified orthopedic surgeon, serving as an OWCP DMA.

In a June 26, 2020 report, Dr. Katz reviewed the SOAF and medical record. He noted that he was unable to locate Dr. Welborn's October 7, 2019 report and parts of the July 23, 2019 report.

In a July 6, 2020 report, Dr. Welborn noted that appellant had reached MMI on July 11, 2019. He explained that on October 7, 2019 he rated her left knee as a 37 percent lower extremity permanent impairment. However, appellant had not received a schedule award, despite that he had assessed her permanent impairment pursuant to the A.M.A., *Guides*.

On July 21, 2020 OWCP provided Dr. Katz with the July 23 and October 7, 2019 reports from Dr. Welborn.

In a July 27, 2020 report, Dr. Katz reviewed the SOAF and medical record, referred to the sixth edition of the A.M.A., *Guides*, and applied the diagnosis-based impairment (DBI) method. For the left lower extremity, the DMA referred to the Knee Regional Grid, Table 16-3, page 511, using the diagnostic key factor, CDX of a total knee replacement, good result (functional good position), and found Class 2, with default impairment value of 25 percent, with adjustment factors of CDX 2, grade modifier for functional history (GMFH) of 2, grade modifier for physical examination (GMPE) of 2, grade modifier for clinical studies (GMCS) not applicable, for a net adjustment of 0, and a 25 percent impairment rating. For the right lower extremity, Dr. Katz referred to the Knee Regional Grid, Table 16-3, page 511, using the diagnostic key factor, CDX, of a total knee replacement, good result (functional, good position), and again found Class 2, with default impairment value of 25 percent, with adjustment factors of CDX 2, GMFH 2, GMPE 2, and GMCS N/A, for a net adjustment of 0, and a 25 percent impairment rating. Regarding the range of motion (ROM) method, the DMA explained that the key diagnostic factors were not

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

[4] A.M.A., *Guides* (5th ed. 2001).

eligible for an alternative ROM impairment rating. Dr. Katz advised that MMI was reached on July 23, 2019 for the right lower extremity, and October 7, 2019 for the left lower extremity.

Dr. Katz indicated that he reviewed Dr. Welborn's July 23 and October 7, 2019 reports. Regarding the October 7, 2019 report, he advised that Dr. Welborn's "use of Class 3 impairment implying mild motion deficit or instability" was not supported, and that "Class 2 impairment is the appropriate choice." The DMA explained that the documented ROM for the left lower extremity of 0 - 110 did not qualify under Table 16-23, page 549, for a mild motion deficit, and that Dr. Welborn's examination also indicated a "stable" knee. He also noted that the July 23, 2019 report from Dr. Welborn did not include an impairment rating.

By decision dated November 19, 2020, OWCP granted appellant a schedule award for 25 percent permanent impairment of the left lower extremity, less 7 percent previously awarded, for a total of 18 percent due, and 25 percent permanent impairment of the right lower extremity, less 43 percent previously awarded, for a total of 0 percent due. The award ran for 51.84 weeks from October 7, 2019 through October 3, 2020. OWCP noted that the schedule award was based on the July 23, 2019 report of Dr. Welborn and the July 27, 2020 report from Dr. Katz, the DMA.

LEGAL PRECEDENT

The schedule award provisions of FECA[5] and its implementing regulations[6] 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. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants and the Board has concurred in such adoption.[7] As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.[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 position of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.[9] After 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-

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id*. *See also M.F.*, Docket Nos. 21-0759 & 21-1037 (issued May 4, 2022); *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[8] 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 Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Chapter 3.700, Exhibit 1 (January 2010).

[9] *See* A.M.A., *Guides* (6th ed. 2009) 509-11.

CDX) + (GMPE-CDX) + (GMCS-CDX).[10] Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnosis from regional grids and calculations of modifier scores.[11]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed through an OWCP medical adviser for an opinion concerning the nature and extent of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than 25 percent permanent impairment of the right lower extremity and a greater than 25 percent permanent impairment of the left lower extremity for which she previously received schedule award compensation.

Appellant submitted several reports from Dr. Welborn, her treating physician. In his October 7, 2019 report, Dr. Welborn provided an impairment rating for the left lower extremity impairment. He referred to the A.M.A., *Guides*,[13] Table 16-3, and found that appellant had a CDX of left knee replacement with fair result, which equated to a Class 3, 37 percent left lower extremity impairment. However, Dr. Katz, the DMA, reviewed the October 7, 2019 report and advised that Dr. Welborn incorrectly applied Table 16-3 of the A.M.A., *Guides* and that the "use of Class 3 impairment implying mild motion deficit or instability" was not supported" based upon Dr. Welborn's examination findings. Dr. Katz explained that Dr. Welborn's examination found a "stable" knee, which would comport with "Class 2 impairment," and that Dr. Welborn's left knee flexion finding of 110 degrees did not qualify under Table 16-3 for a mild motion deficit.[14]

Dr. Welborn also provided a January 13, 2020 report wherein he found that appellant had 120 degrees of flexion of both knees and a fair result following knee replacement. He opined that she had a 20 percent whole person impairment. The Board notes that this report is of limited probative value as FECA, does not allow schedule awards for impairment of the body as a whole.[15] Accordingly, Dr. Welborn's January 14, 2020 report does not comport with OWCP's procedures and is insufficient to establish any ratable impairment.[16]

[10] *Id*. at 515-22.

[11] *Id*. at 23-28.

[12] *Supra* note 9 at Chapter 2.808.6f (March 2017).

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

[14] *Id*. at 511.

[15] *See D.K.*, Docket No. 21-0303 (issued July 8, 2021); *M.M.*, Docket No. 17-0197 (issued May 1, 2018); *J.G.*, Docket No. 12-0995 (issued October 22, 2012).

[16] *See M.M.*, *id*.

The Board finds that the DMA, Dr. Katz, in his February 10, 2020 report, properly utilized the medical evidence of record, including Dr. Welborn's examination findings, and applied the appropriate provisions and grading schemes of the sixth edition of the A.M.A., *Guides* to determine that appellant had 25 percent permanent impairment of the left lower extremity and 25 percent permanent impairment of the right lower extremity. Using the DBI rating method of the A.M.A., *Guides*, and the CDX of left knee total replacement, good result (functional good position), the DMA found Class 2, with default impairment value of 25 percent, with adjustment factors of CDX 2, GMFH 2, GMPE 2, and GMCS N/A, for a net adjustment of 0, and a 25 percent impairment rating for the left lower extremity. He reviewed Dr. Welborn's January 13, 2020 findings regarding the right knee, and also found that appellant had right lower extremity permanent impairment rating of 25 percent. The DMA noted that the A.M.A., *Guides* did not allow an impairment rating due to loss of ROM for the applicable diagnosis. In addition, he disagreed with Dr. Welborn's choice of Class 3, as noted, and indicated that Class 2 was the appropriate impairment rating, based upon Dr. Welborn's examination findings regarding retained flexion and "stable" knee. For these reasons, the Board finds that OWCP properly relied on the DMA's opinion and 25 percent impairment ratings for the right and left lower extremities.

There is no medical evidence in conformance with the A.M.A., *Guides* showing greater impairment. As there is no medical evidence in conformance with the A.M.A., *Guides* establishing that appellant has greater impairment than previously awarded, the Board finds that appellant has not met her burden of proof to establish that she is entitled to additional schedule award compensation.[17]

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 greater than 25 percent permanent impairment of the right lower extremity and greater than 25 percent permanent impairment of the left lower extremity for which she previously received a schedule award.

[17] *M.H.*, Docket No. 20-1109 (issued September 27, 2021); *R.H.*, Docket No. 20-1472 (issued March 15, 2021); *L.D.*, Docket No. 19-0495 (issued February 5, 2020).

ORDER

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

Issued: June 21, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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