United States Department of Labor
Employees' Compensation Appeals Board

G.K., Appellant	)	
and	)	**Docket No. 22-0691**
	)	**Issued: November 2, 2022**
U.S. POSTAL SERVICE, BERLIN POST OFFICE, Berlin, WI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 31, 2022 appellant filed a timely appeal from a November 5, 2021 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 12 percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

FACTUAL HISTORY

On March 26, 2019 appellant, then a 51-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a left leg injury when he tripped and fell to the

[1] 5 U.S.C. § 8101 *et seq*.

ground while in the performance of duty. He stopped work on the date of the claimed injury and returned to regular duty on April 1, 2019.

On August 21, 2019 Dr. David R. Jones, a Board-certified orthopedic surgeon, performed a primary reconstruction repair of an "almost chronic tear" of the left rectus femoris musculo-tendinous origin. Appellant stopped work prior to the surgery and, on October 3, 2019, he returned to regular duty.

By decision dated April 17, 2020, OWCP accepted appellant's claim for spontaneous rupture of other tendons of the left thigh; and strain of unspecified muscles, fascia, and tendons at the left thigh level. By decision dated May 22, 2020, it expanded the acceptance of his claim to include strain of left quadriceps muscle, fascia, and tendon; and strain of other specified muscles, fascia, and tendons at the left thigh level.

On May 11, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

Appellant submitted a July 5, 2020 report from Dr. Jones who diagnosed rupture of the left quadriceps at the musculoligamentous junction and indicated that he last examined appellant on April 30, 2020. Dr. Jones found that appellant had 15 percent "permanent disability" of his left lower extremity.

On November 4, 2020 Witt Cooper, a physical therapist, performed a functional capacity evaluation (FCE) on appellant. In a November 19, 2020 report, Dr. Jones noted that the physical therapist who administered the recent FCE advised that appellant's left lower extremity had at least a 50 percent loss of strength compared to the other side, a circumstance that caused various physical limitations. He indicated, "[a]s such we will change [his partial permanent disability] rating to 35 [percent,] which I think is reasonable in this case."

Appellant submitted a January 15, 2021 report from Dr. Neil Allen, a Board-certified internist and neurologist, who reported the findings of the physical examination he performed on that date, including range of motion (ROM) findings for the left hip and left knee. He noted that appellant exhibited mild crepitus of the left knee, tenderness to palpation over the left anterior thigh, and 4/5 strength in the left quadriceps. Dr. Allen provided a permanent impairment rating of appellant's left lower extremity utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[2] He utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-3 (Knee Regional Grid), page 509, the class of diagnosis (CDX), appellant's left-sided tendon rupture/strain, resulted in a class 1 impairment (moderate deficits and/or significant weakness) with a default value of 10 percent. Dr. Allen assigned a grade modifier for functional history (GMFH) of 1 based on antalgic gait; and a grade modifier for physical examination (GMPE) of 2 based on moderate ROM deficits, moderate palpatory findings, and mild deformity compared to opposite side. He found that a grade modifier for clinical studies (GMCS) was not applicable because clinical studies were utilized to determine the CDX. Dr. Allen utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (2 - 1) = +1, which resulted in a grade D or 12 percent

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

permanent impairment of the left lower extremity. He also utilized the ROM rating method and referenced Table 16-23 (Knee Motion Impairment) and Table 16-24 (Hip Motion Impairment) on page 549 to find 10 percent permanent impairment for left knee lag extension of -5 degrees; 5 percent permanent impairment for left hip flexion of 60 degrees; and 5 percent permanent impairment for left hip internal rotation of 18 degrees. Dr. Allen combined these values, using the Combined Values Chart on page 604, to determine that appellant had 19 percent permanent impairment of the left lower extremity due to ROM deficits. He concluded that appellant had 19 percent permanent impairment of the left lower extremity given that he had a higher rating for permanent impairment under the ROM rating method, than under the DBI rating method.

OWCP referred appellant to Dr Herbert White, Jr., a Board-certified serving as a district medical adviser (DMA), and requested that he review and comment on Dr. Allen's permanent impairment rating. In a March 28, 2021 report, Dr. White utilized the DBI rating method to find that, under Table 16-3, the CDX, appellant's left-sided tendon rupture/strain, resulted in a class 1 impairment with a default value of 10 percent. He assigned a GMFH of 1 based on antalgic gait; and a GMPE of 2 based on moderate palpatory findings. Dr. White found that the GMCS was not applicable because clinical studies were utilized to determine the CDX. He utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (2 - 1) = +1, which resulted in a grade D or 12 percent permanent impairment of the left lower extremity. Dr. White noted that Table 16-3 did not allow for use of the ROM rating method.[3]

By decision dated May 18, 2021, OWCP granted appellant a schedule award for 12 percent permanent impairment of his left lower extremity. The award ran for 34.56 weeks for the period from January 15 through September 13, 2021 and was based on the March 28, 2021 report of Dr. White.

On May 26, 2021 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. He submitted an undated "addendum" report, received by OWCP on July 1, 2021, in which Dr. Allen again asserted that the ROM rating method could be used for the diagnosed conditions.

By decision dated November 5, 2021, OWCP's hearing representative affirmed the May 18, 2021 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA[4] and its implementing federal 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. 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 for all claimants, OWCP has adopted

[3] Dr. White found that the date of maximum medical improvement (MMI) was January 15, 2021, the date of Dr. Allen's examination.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

the A.M.A., *Guides* as the uniform standard applicable to all claimants and the Board has concurred in such adoption.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

Chapter 16 of the sixth edition of the A.M.A., *Guides*, pertaining to the lower extremities, provides that DBI is the primary method of calculation for the lower limb and that most impairments are based on the DBI where impairment class is determined by the diagnosis and specific criteria as adjusted by the grade modifiers for functional history, physical examination, and clinical studies. It further provides that alternative approaches are also provided for calculating impairment for peripheral nerve deficits, complex regional pain syndrome, amputation, and range of motion. Range of motion is primarily used as a physical examination adjustment factor.[8] The A.M.A., *Guides*, however, also explains that some of the diagnosis-based grids refer to the range of motion section when that is the most appropriate mechanism for grading the impairment. This section is to be used as a stand-alone rating when other grids refer to this section or no other diagnosis-based sections of the chapter are applicable for impairment rating of a condition.[9]

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, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.[10] 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).[11] Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 12 percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

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[6] *Id.*; *see V.J.*, Docket No. 1789 (issued April 8, 2020); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award 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] A.M.A., *Guides* (6th ed. 2009) 497, section 16.2.

[9] *Id.* at 543; *see also M.D.*, Docket No. 16-0207 (issued June 3, 2016); *D.F.*, Docket No. 15-0664 (issued January 8, 2016).

[10] *Id.* at 509-11.

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

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

In his March 28, 2021 report, Dr. White utilized the DBI rating method in a manner that mirrored the DBI rating calculation of Dr. Allen and found that, under Table 16-3 (Knee Regional Grid), the CDX for appellant's left-sided tendon rupture/strain resulted in a class 1 impairment. He assigned a GMFH of 1 based on antalgic gait; and a GMPE of 2 based on moderate palpatory findings. Dr. White found that GMCS was not applicable because clinical studies were utilized to determine the CDX. He utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (2 - 2) = +1, which resulted in a grade D or 12 percent permanent impairment of the left lower extremity. Dr. White noted that Table 16-3 did not allow for use of the ROM rating method. As Dr. White, the DMA, applied the standards of the sixth edition of the A.M.A., *Guides* to the findings of Dr. Allen, an attending physician and properly determined that appellant had 12 percent permanent impairment of his left lower extremity, his report constitutes the weight of the medical evidence.

In his January 15, 2021 report, Dr. Allen determined that appellant had 19 percent permanent impairment of the left lower extremity due to ROM deficits. He concluded that appellant had 19 percent permanent impairment of the left lower extremity given that he had a higher rating for permanent impairment under the ROM rating method, than under the DBI rating method. The Board notes, however, that Table 16-3 does not provide for use of the ROM rating method for the diagnosed condition of ruptured tendon/strain of the lower extremity.[13] Therefore, Dr. White properly concluded in his March 28, 2021 report that appellant had 12 percent permanent impairment of his left lower extremity, as calculated utilizing the DBI rating method.

Appellant submitted a July 5, 2020 report from Dr. Jones, an attending physician, who indicated that he had 15 percent permanent disability of his left lower extremity. In a November 19, 2020 report, Dr. Jones noted that appellant had 35 percent permanent disability of the same extremity. However, these ratings are of limited probative value because he did not provide permanent impairment ratings supported by explanations of how they were derived in accordance with the standards of the sixth edition of the A.M.A., *Guides*. The Board has held that an opinion on permanent impairment is of limited probative value if it is not derived in accordance with the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses.[14]

As appellant has not submitted medical evidence sufficient to establish greater than the 12 percent permanent impairment of his left upper extremity previously awarded, the Board finds that he has not met his 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 permanent impairment.

[13] *Id.* at 509, Table 16-3. *See also supra* notes 8 and 9.

[14] *See N.A.*, Docket No. 19-0248 (issued May 17, 2019); *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion, which is not based upon the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses is of diminished probative value in determining the extent of a claimant's permanent impairment).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than 12 percent permanent impairment of his left lower extremity, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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