

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

I.S., Appellant)	
)	
and)	
)	Docket No. 22-0922
U.S. POSTAL SERVICE, NEW YORK)	Issued: November 21, 2022
INTERNATIONAL SERVICE CENTER,)	
JOHN F. KENNEDY INTERNATIONAL)	
AIRPORT, Jamaica, NY, 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 May 23, 2022 appellant filed a timely appeal from an April 18, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than 26 percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 13, 2005 appellant, then a 45-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on December 29, 2004 she injured her elbow, left index finger, and knees when she tripped on straps on the workroom floor while in the performance of duty.

OWCP accepted the claim for tear of the medial meniscus of the left knee, derangement of the anterior horn of the lateral meniscus, and tear of the lateral meniscus of the left knee. It authorized left knee arthroscopy for lateral meniscal tear of the left knee, which was performed on September 8, 2005, and left knee arthroscopy with partial lateral meniscectomy and excision of loose body, which was performed on July 25, 2017. The surgeries were performed by Dr. Joseph A. Bosco, an attending Board-certified orthopedic surgeon. OWCP paid appellant wage-loss compensation on the supplemental rolls from July 20 to November 3, 2005.

On November 16, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In an October 12, 2020 report, Dr. Bosco noted that appellant was status-post left knee arthroscopy, partial medial meniscectomy, and excision of loose body on July 25, 2017. He related assessments of left knee medial meniscus tear and left knee post-traumatic arthritis/loose body. Dr. Bosco found that appellant had reached maximum medical improvement (MMI). He opined that pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² (A.M.A., *Guides*) Table 16-3 of the Knee Regional Grid at page 509, appellant had 13 percent permanent impairment for the meniscal injury. At Table 16-3 page 511, appellant had 25 percent permanent impairment for knee joint arthritis. Dr. Bosco concluded that appellant had a total of 38 percent permanent impairment of her left knee. In a September 10, 2021 report, he repeated his October 12, 2020 opinion.

On January 14, 2022 OWCP routed Dr. Bosco's October 12, 2020 report, a statement of accepted facts (SOAF), and the case file to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for review and a determination of permanent impairment of the left lower extremity in accordance with the sixth edition of the A.M.A., *Guides*³ and the date of MMI. The SOAF noted that the case was accepted for left knee lateral meniscus tear.

In a January 21, 2022 report, Dr. Katz noted that he reviewed the SOAF and medical records and that he utilized the sixth edition of the A.M.A., *Guides* to perform his impairment rating. He provided an impairment rating using the diagnosis-based impairment (DBI) methodology for the diagnosis of partial lateral meniscectomy. Applying the Knee Regional Grid at Table 16-3, pages 509-511, Dr. Katz assessed the class of diagnosis (CDX) partial lateral meniscectomy as a Class 1 impairment, with a default value of 2 percent. Based on a review of the medical records, he assigned a grade modifier for functional history (GMFH) of 2, a grade modifier for physical examination (GMPE) of 1, and a grade modifier for clinical studies (GMCS) of 1. Dr. Katz used the net adjustment formula and calculated (GMPH - CDX) (2-1) = +1; (GMPE

² A.M.A., *Guides* (6th ed. 2009).

³ *Id.*

- CDX) (1-1) = 0; and (GMCS - CDX) (1-1) = 0, for a net adjustment of +1. He concluded that an adjustment +1 from the default value for a CDX Class 1 impairment resulted in a Grade D or 2 percent permanent impairment rating. Dr. Katz did not provide an impairment rating using the range of motion (ROM) methodology, explaining that, “The key diagnostic factors utilized in determination of DBI for the accepted conditions of this claim are NOT eligible for an alternative ROM impairment calculation based on the directions of the [A.M.A.,] *Guides*.” (Emphasis in the original.) With regard to his review of Dr. Bosco’s report, Dr. Katz noted that, Dr. Bosco rated appellant’s permanent impairment for medial and lateral meniscectomy in determining 13 percent permanent impairment. However, only a partial lateral meniscectomy was performed. Dr. Katz also noted that Dr. Bosco assigned no grade modifiers in rating appellant’s permanent impairment. With regard to Dr. Bosco’s additional rating for arthritis, Dr. Katz noted that he was unable to locate any specific plain radiograph interpretation indicating loss of articular cartilage that would justify Dr. Bosco’s rating for arthritis. He also noted that Dr. Bosco used two separate key diagnostic factors under the same regional grid, but if two diagnoses impacted the same joint/region, the examiner should use the diagnosis with the highest causally-rated impairment rating. Dr. Katz found no basis for the rating for arthritis and opined that appellant was entitled to a rating of two percent for the partial lateral meniscectomy. He advised that appellant reached MMI on October 12, 2020, the date of Dr. Bosco’s examination.

In a development letter dated January 28, 2022, OWCP requested that Dr. Bosco review the January 21, 2022 report from the DMA and provide a supplemental report as to whether he agreed with the DMA’s findings. It also authorized radiographs to support Dr. Bosco’s calculations.

In a February 7, 2022 report, Dr. Bosco noted that x-rays obtained that day demonstrated Grade 3 post-traumatic osteoarthritis of the left knee, particularly worse in the medial and patellofemoral compartments.

On February 14, 2022 OWCP requested that the DMA review Dr. Bosco’s February 7, 2022 report and provide a permanent impairment rating.

In a February 15, 2022 report, Dr. Katz noted that the case was accepted for tear of the medial meniscus of the left knee; tear of the lateral meniscus of the left knee; and derangement of the anterior horn of the left lateral meniscus. He provided an impairment rating using the DBI methodology according to the A.M.A., *Guides* for the key diagnostic factor of primary knee arthritis, 1 mm cartilage interval. Dr. Katz applied the Knee Regional Grid at Table 16-3, pages 509-511, and found a CDX-primary knee joint arthritis with a Class 3 impairment and default value of 30 percent. He determined GMPH of 1 and GMPE of 2. Dr. Katz explained that GMCS was not applicable as clinical studies were used to determine the CDX. He applied the net adjustment formula and calculated (GMFH - CDX) (1-3) = -2 and (GMPE - CDX) (2-3) = -1, for a net adjustment of -2 (the maximum). Dr. Katz opined that the result was a Class 3 impairment with an adjustment of -2 from the default value C resulted in a Class 3, Grade A, 26 percent impairment rating. He further explained that pursuant to the A.M.A., *Guides*, if appellant had two significant diagnoses the examiner “should use the diagnosis with the highest causally-related impairment rating for the impairment calculation.” Therefore, the higher rating for arthritis was used.

In a March 16, 2022 supplemental report, Dr. Bosco noted that he had reviewed the February 15, 2022 report from Dr. Katz and agreed that appellant had a left lower extremity permanent impairment of 26 percent.

On March 21, 2022 OWCP requested that the DMA review the March 16, 2020 supplemental report from Dr. Bosco and provide a final assessment of impairment.

In a March 23, 2022 addendum, Dr. Katz noted that since Dr. Bosco agreed with his determination of a left lower extremity permanent impairment of 26 percent, no further action was necessary.

On April 5, 2022 OWCP requested that the DMA clarify his March 23, 2022 report with regard to the date of MMI.

In an April 9, 2022 addendum, Dr. Katz noted that MMI was reached on February 7, 2022, the date of the report from Dr. Bosco which included appellant's knee x-rays.

By decision dated April 18, 2022, OWCP granted appellant a schedule award for 26 percent permanent impairment of the left lower extremity. The period of the award ran for 74.88 weeks, from February 7, 2022 through July 16, 2023, and was based upon the opinions of her treating physician, Dr. Bosco, and the DMA, Dr. Katz.

LEGAL PRECEDENT

The schedule award provisions of FECA⁴ and its implementing regulations⁵ 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 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.⁶ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁷ 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.⁸

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's *International Classification of Functioning, Disability and Health*

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.*; see S.C., Docket No. 22-0922 (issued January 12, 2021); see also Ronald R. Kraynak, 53 ECAB 130 (2001).

⁷ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

⁸ P.R., Docket No. 19-0022 (issued April 9, 2018); Isidoro Rivera, 12 ECAB 348 (1961).

(ICF): *A Contemporary Model of Disablement*.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 foot/ankle and knee, reference is made to Table 16-2 through Table 16-4 beginning on page 501.¹⁰ After the CDX is determined from each of these tables (including identification of a default grade value), the net adjustment formula is applied using 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

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than 26 percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

In support of her claim, appellant submitted an October 12, 2020 report from her treating physician, Dr. Bosco, who opined that appellant had 13 percent permanent impairment of the left lower extremity based upon her meniscal injury, and 25 percent permanent impairment for her left knee joint arthritis, for a total 38 percent permanent impairment of her left knee. He repeated the same opinion in a September 10, 2021 report.

OWCP properly routed the October 12, 2020 report from Dr. Bosco to the DMA, Dr. Katz, for review.¹⁴ In a January 21, 2022 report, Dr. Katz provided an impairment rating of two percent for the left lower extremity based on the diagnosis of partial lateral meniscectomy of the left knee.

On January 28, 2022 OWCP requested that Dr. Bosco review the January 21, 2022 report from the DMA and provide a supplemental report. In a February 7, 2022 report, Dr. Bosco reviewed x-rays of appellant's left knee taken that day and indicated that the x-rays demonstrated a Grade 3 post-traumatic osteoarthritis of the left knee.

⁹ A.M.A., *Guides*, page 3, section 1.3.

¹⁰ See A.M.A., *Guides* 501-11 (6th ed. 2009).

¹¹ *Id.* at 515-22.

¹² *Id.* at 23-8.

¹³ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 2.808.6f (March 2017); see *K.R.*, Docket No. 21-0247 (issued February 25, 2022); *D.J.*, Docket No. 19-0352 (issued July 24, 2020).

¹⁴ *Id.*

Based on the left knee x-rays, from Dr. Bosco, Dr. Katz provided an impairment rating for the CDX- primary knee joint arthritis, 1 mm cartilage interval, a Class 3 impairment. In a February 15, 2022 report, the DMA properly applied the Knee Regional Grid at Table 16-3, pages 509-511 and determined that appellant had 26 percent permanent impairment of the left lower extremity due to her left knee joint arthritis. He also explained that if there are multiple diagnoses within a specific region, then the most impairing diagnosis is rated, because it is probable this will incorporate the functional losses of the less impairing diagnoses.¹⁵ Dr. Bosco agreed with Dr Katz' impairment rating of 26 percent.

As the medical evidence of record is insufficient to establish greater than the 26 percent permanent impairment of the left lower extremity previously awarded, the Board finds that appellant has not met her burden of proof.

CONCLUSION

The Board finds that appellant has not established that she has more than 26 percent permanent impairment of the left lower extremity, for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 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

¹⁵ *Supra* note 10 at 529.