



schedule award; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

On July 17, 2019 appellant, then a 37-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on June 24, 2019 she sustained a left knee injury due to repetitive pounding of knees from walking and pushing heavy equipment while in the performance of duty. She stopped work on July 15, 2019. OWCP accepted appellant's claim for lateral meniscus tear of the left knee. It paid her wage-loss compensation for disability from work on the supplemental rolls commencing August 31, 2019 and on the periodic rolls commencing February 2, 2000.

On December 4, 2019 Dr. G. Jason Hunt, an osteopath and Board-certified orthopedic surgeon, performed OWCP-authorized left knee surgery, including left knee arthroscopy with partial medial and lateral meniscectomies, chondroplasty of the medial femoral condyle, and debridement of impinging intercondylar notch with graft. Appellant submitted numerous records relating to the surgery, including a December 4, 2019 report from a provider with an illegible signature, which addressed the anesthesia used for the surgery. She also submitted several reports, dated between February 13 and May 5, 2020, in which Dr. Hunt discussed the post-surgery care for appellant's left knee. In these reports, Dr. Hunt observed that appellant's left knee pain progressively improved.

In a July 17, 2020 report, Dr. Hunt indicated that appellant reported that she was doing very well and back to full-duty work. He noted that she also reported experiencing "some soreness" in her left knee at the end of the day, which she rated 1 out of 10. Dr. Hunt detailed the findings of his physical examination, noting that appellant walked with a normal heel-to-toe gait and had well-healed scars of the left knee. He diagnosed status post December 4, 2019 left knee arthroscopy with chondroplasty and debridement. Dr. Hunt found that appellant had reached maximum medical improvement (MMI) as of the July 17, 2020 physical examination. He indicated that, under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>3</sup> appellant's left knee condition fell under class 1. Dr. Hunt found that, given the tears of both menisci, appellant had four percent permanent impairment of each lower extremity.

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

On October 14, 2020 OWCP referred appellant's case to Dr. Herbert White, Jr., a Board-certified occupational medicine specialist and OWCP district medical adviser (DMA), and requested that he review the medical record, including Dr. Hunt's July 17, 2020 report, and provide an impairment rating of her left lower extremity under the sixth edition of the A.M.A., *Guides*.

In an October 20, 2020 report, Dr. White discussed Dr. Hunt's treatment of appellant's left knee after the December 4, 2019 surgery. He noted that Dr. Hunt saw her between February 13 and July 17, 2020 and observed slowly improving left knee pain. Dr. White indicated that, at the

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

time of the July 17, 2020 examination, Dr. Hunt observed that appellant had a normal gait and the left knee surgical scars were well healed. He noted that, at that time, Dr. Hunt found mild tenderness of the left knee and obtained a diagnosis-based impairment (DBI) rating of four percent of the left lower extremity. Dr. White referred to the sixth edition of the A.M.A., *Guides* and utilized the DBI rating method to find that, under Table 16-3 (Knee Regional Grid), page 509, the class of diagnosis (CDX) for the meniscal tear condition of appellant's left knee resulted in a class 1 impairment (tier 3 -- partial medial and lateral meniscectomies) with a default value of 10. He assigned a grade modifier for functional history (GMFH) of 0 due to normal gait and a grade modifier for physical examination (GMPE) of 1 due to mild tenderness. Dr. Hunt found that a grade modifier of clinical studies (GMCS) was not applicable as no clinical studies were obtained at the time MMI was reached. He utilized the net adjustment formula,  $(GMFH - CDX) + (GMPE - CDX) = (0 - 1) + (1 - 1) = -1$ , which resulted in a grade B or eight percent permanent impairment of the left lower extremity.<sup>4</sup>

By decision dated November 6, 2020, OWCP granted appellant a schedule award for eight percent permanent impairment of the left lower extremity (left leg). The award ran for 23.04 weeks from July 17 through December 25, 2020 and was based on the impairment rating of Dr. White, which utilized the examination findings of Dr. Hunt.

On October 5, 2021 appellant filed a Form CA-7 for an increased schedule award.

Appellant submitted May 13 and 18, June 21, and July 19, 2021 reports from Dr. Hunt who reported physical examination findings, detailed his treatment of her left knee condition, and discussed work limitations. She also submitted a May 14, 2021 magnetic resonance imaging (MRI) scan of the left knee and a report of his performance of a left knee arthroscopy with partial medial and lateral meniscectomies on June 7, 2021.

In an October 5, 2021 development letter, OWCP notified appellant of the deficiencies of her claim for an increased schedule award and advised her of the type of evidence needed. It afforded her 30 days to submit the necessary evidence.

Appellant resubmitted a copy of the December 4, 2019 report from a provider with an illegible signature, which addressed the anesthesia used for the December 4, 2019 surgery.

By decision dated November 18, 2021, OWCP denied appellant's claim for an increased schedule award. It explained that the medical evidence of record was insufficient to establish greater than the eight percent permanent impairment previously awarded.

On December 13, 2021 appellant requested reconsideration of the November 18, 2021 decision.

Appellant submitted an October 8, 2021 report from Dr. Deborah L. Renelus, a Board-certified family medicine specialist, who reported physical examination findings and advised that

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<sup>4</sup> Dr. White found that appellant had reached MMI as of Dr. Hunt's July 17, 2020 physical examination.

appellant was fit to return to work without restrictions. She also submitted a December 7, 2021 report from Dr. Hunt who indicated that she could work without restrictions.

By decision dated December 23, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provisions of FECA,<sup>5</sup> and its implementing federal regulation,<sup>6</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. 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 the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>7</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>8</sup>

Chapter 16 of the sixth edition of the A.M.A., *Guides*, pertaining to the lower extremities, provides that diagnosis-based impairment is the primary method of calculation for the lower limb and that most impairments are based on the diagnosis-based impairment 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.<sup>9</sup> The A.M.A., *Guides*, however, also explain 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.<sup>10</sup>

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.<sup>11</sup> After the CDX is determined from the Knee Regional Grid (including

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

<sup>7</sup> *Id.* See also *T.T.*, Docket No. 18-1622 (issued May 14, 2019).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>9</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009) 497, section 16.2.

<sup>10</sup> *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).

<sup>11</sup> *Id.* at 509-11.

identification of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment formula is  $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$ .<sup>12</sup> 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.<sup>13</sup>

### **ANALYSIS -- ISSUE 1**

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

In an October 21, 2020 report, Dr. White, the DMA, properly determined that appellant had eight percent permanent impairment of the left lower extremity under the sixth edition of the A.M.A., *Guides*. He discussed Dr. Hunt's physical examination findings, including those obtained on July 17, 2020. Dr. White utilized the DBI rating method to find that, under Table 16-3 (Knee Regional Grid), the CDX for the meniscal tear condition of appellant's left knee resulted in a class 1 impairment (tier 3 -- partial medial and lateral meniscectomies) with a default value of 10. He assigned a GMFH of 0 due to normal gait and a GMPE of 1 due to mild tenderness.<sup>14</sup> Dr. Hunt found that a GMCS was not applicable as no clinical studies were obtained at the time MMI was reached.<sup>15</sup> He properly utilized the net adjustment formula,  $(GMFH - CDX) + (GMPE - CDX) = (0 - 1) + (1 - 1) = -1$ , which resulted in a grade B or eight percent permanent impairment of the left lower extremity.<sup>16</sup>

Appellant submitted additional medical reports produced after Dr. White's October 21, 2020 report, including several reports of Dr. Hunt; however, these reports did not contain an impairment rating, which demonstrated that she had greater than eight percent permanent impairment of the left lower extremity.

As appellant has not submitted an impairment rating establishing greater than eight percent permanent impairment of the left lower extremity (left leg) for which she previously received a schedule award, she 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 permanent impairment.

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<sup>12</sup> *Id.* at 515-22.

<sup>13</sup> *Id.* at 23-28.

<sup>14</sup> *Id.* at 509, Table 16-3.

<sup>15</sup> *Id.* at 519, Table 16-8.

<sup>16</sup> *See supra* note 12.

## LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.<sup>17</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>18</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>19</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>20</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>21</sup>

The Board has held that the submission of evidence or argument, which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>22</sup>

## ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

Appellant did not establish that OWCP erroneously applied or interpreted a specific point of law, and did not advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on either the first or second requirement under 20 C.F.R. § 10.606(b)(3).

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<sup>17</sup> 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>18</sup> 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>19</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. *Supra* note 8 at Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>20</sup> *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>21</sup> *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>22</sup> *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

On reconsideration, appellant submitted an October 8, 2021 report from Dr. Renelus who advised that she was fit to return to work without restrictions. She also submitted a December 7, 2021 report from Dr. Hunt who indicated that she could work without restrictions. While this medical evidence is new, it is not relevant because it does not directly address the underlying issue of the present case, *i.e.*, whether appellant submitted medical evidence, which contained an assessment of permanent impairment demonstrating greater than eight percent permanent impairment of the left lower extremity (left leg). The submission of this medical evidence does not warrant a review of her claim on the merits because the Board has held that the submission of evidence or argument, which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>23</sup> Therefore, appellant is not entitled to further review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish greater than eight percent permanent impairment of the left lower extremity, for which she previously received a schedule award. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

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<sup>23</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 18 and December 23, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 13, 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