

ISSUE

The issue is whether appellant has met his burden of proof to establish a ratable permanent impairment of the right lower extremity causally related to his accepted June 15, 2016 employment injury.

FACTUAL HISTORY

On June 15, 2016 appellant, then a 45-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on that date he was participating in canine agitation training in a full bite suit when a patrol canine caught his shoulder causing him to lose his balance and experience a pop and pain in his right knee while in the performance of duty. He did not stop work. OWCP accepted the claim for sprain of the cruciate ligament of the right knee.

The record reflects that appellant underwent OWCP-approved arthroscopic-assisted right knee anterior cruciate ligament (ACL) reconstruction using an Achilles allograft and medial femoral condyle chondroplasty surgery on August 22, 2018 performed by Dr. Todd J. Tucker, a Board-certified orthopedic surgeon. The operative report noted a preoperative diagnosis of right knee ACL tear.

Appellant stopped work following surgery through September 24, 2018 and returned to regular duty on November 13, 2018.

In reports dated January 2 through July 30, 2019, Dr. Tucker examined appellant's right knee and found a normal Lachman test, no pivot shift, and no joint line tenderness.

In a report dated March 26, 2020, Dr. Demitri A. Adarmes, a Board-certified physiatrist, found that appellant had reached maximum medical improvement (MMI). He noted appellant's history of injury, accepted condition, and medical treatment including arthroscopic ACL repair. Dr. Adarmes performed a physical examination and noted crepitation of both knees with active and passive range of motion (ROM). He found that on three measurements appellant demonstrated ROM of 130 degrees of flexion, and 0 degrees of extension. Dr. Adarmes found that sensation was decreased to light touch in the anterior right knee and proximal tibia. He noted that appellant demonstrated grade 1 Lachman test of the right knee and mild right anterior drawer laxity. Dr. Adarmes reported that right knee flexion and extension muscle strength was 4/5. He found that appellant's right leg circumference measured 336 millimeters and his left leg measured 350 millimeters. Dr. Adarmes attributed this atrophy to disuse. He referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)³ and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-3 (Knee Regional Grid), page 510, the class of diagnosis (CDX) for a cruciate ligament injury with mild laxity resulted in a default value of 10 percent of the lower right extremity. Dr. Adarmes reported that grade modifiers provided zero adjustment.

³ A.M.A., *Guides* (6th ed. 2009).

On August 18, 2020 appellant filed a claim for compensation (Form CA-7) requesting a schedule award.

On December 9, 2020 OWCP forwarded Dr. Adarmes report, the medical record, and statement of accepted facts (SOAF) to Dr. Jovito B. Estaris, a physician Board-certified in occupational medicine, to serve as a district medical adviser (DMA). In a January 3, 2021 report, Dr. Estaris reviewed the SOAF and medical record. He opined that, under the DBI rating method, Table 16-3 (Knee Regional Grid), page 510, appellant had a class 0 for a CDX of cruciate ligament injury with no instability. Dr. Estaris noted that appellant's right leg circumference was 3.36 centimeters and his left was 3.50 centimeters, finding that this was insignificant atrophy. He reported inconsistent examination findings between Dr. Adarmes and Dr. Tucker in regard to Lachman and pivot shift tests. Dr. Estaris noted that, while Dr. Adarmes found grade 1 Lachman test and mild anterior drawer laxity, Dr. Tucker submitted a series of reports finding normal Lachman and pivot shift tests. He referred to page 517 of the A.M.A., *Guides* to find that, if physical examination findings are determined to be unreliable or inconsistent, they are excluded from the grading process. Dr. Estaris opined that the appellant had zero percent impairment of the right lower extremity.

On January 26, 2021 OWCP provided Dr. Adarmes with a copy of the January 3, 2021 DMA report for review and comment.

By decision dated February 12, 2021, OWCP denied appellant's claim for a schedule award finding that the weight of the medical evidence established that he had no ratable impairment due to his accepted right knee injury.

OWCP continued to receive additional medical evidence. In a report dated February 26, 2021, Dr. Adarmes asserted that he carefully assessed the degree of laxity in the right knee on March 26, 2020 as compared to the uninjured left knee, and found mild laxity in the right knee. He further disagreed with the DMA's determination that appellant had no significant atrophy in his right leg. Dr. Adarmes reported that his grade modifier functional history (GMFH) was 1, that his grade modifier physical examination (GMPE) was 1, and that his grade modifier clinical studies (GMCS) was 1 which was indicative of a class 1 impairment. He recommended an impartial medical examination to resolve the conflict of medical opinion evidence.

On April 12, 2021 appellant requested reconsideration. He submitted notes from Dr. Tucker completed on April 6, 2021 in which he asserted that appellant had loss of flexion in appellant's knee, that he could not fully squat, but that his knee was stable.

On May 14, 2021 OWCP forwarded the additional reports from Drs. Tucker and Adarmes to Dr. Estaris as DMA. In a May 28, 2021 report, Dr. Estaris found that Dr. Tucker reported no instability in appellant's right knee. He again found inconsistency between the findings of Drs. Tucker and Adarmes regarding stability and Lachman test. Dr. Estaris further found that there was no significant atrophy of the right lower extremity.

By decision dated June 10, 2021, OWCP denied modification.

On January 3, 2022 appellant, through counsel, requested reconsideration and contended that there was an unresolved conflict of medical opinion evidence between Dr. Adarmes and the DMA.

By decision dated March 15, 2022, OWCP denied modification.

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. 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.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.⁷

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 portion of the leg for the present case, reference is made to Table 16-3 (Knee Regional Grid) beginning on page 509.⁸ After the CDX is determined from the Knee Regional Grid (including identification of a default grade value), the Net Adjustment Formula is applied using GMFH, GMPE, and GMCS. The Net Adjustment Formula is $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX)$.⁹ 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.¹⁰

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 percentage of impairment in accordance with the A.M.A., *Guides*, with an OWCP medical adviser providing rationale for the percentage of impairment specified.¹¹

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404 (a); *see also T.T.*, Docket No. 18-1622 (issued May 14, 2019); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ *See* A.M.A., *Guides* (6th ed. 2009) 509-11.

⁹ *Id.* at 515-22.

¹⁰ *Id.* at 23-28.

¹¹ *Supra* note 7 at Chapter 2.808.6(f) (March 2017).

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.¹² 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.¹³ When there exist 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.¹⁴

ANALYSIS

The Board finds that this case is not in posture for decision.

In support of his schedule award claim, appellant submitted reports dated March 26, 2020 and February 26, 2021 from Dr. Adarmes who determined that, in accordance with Table 16-3, page 510, of the A.M.A., *Guides*, appellant had a default value of 10 percent permanent impairment for a cruciate ligament injury with mild laxity. He reported that appellant demonstrated grade 1 Lachman test of the right knee and mild right anterior drawer laxity when compared to the ineffective left knee. Dr. Adarmes assigned GMFH, GMPE, and GMCS of 1 and as appellant had no adjustment concluded that he had a final impairment rating of 10 percent of the right lower extremity.

In reports dated January 3 and May 28, 2021, Dr. Estaris, the DMA, found that appellant had a class 0, no instability cruciate ligament injury. He relied on the treatment notes from Dr. Tucker, who reported no right knee instability following surgery. Dr. Estaris determined that, based on the discrepancies between the physical findings from Drs. Tucker and Adarmes, Dr. Adarmes' reports were insufficient to establish mild laxity of the right knee cruciate ligament resulting in a ratable right knee impairment.

As Dr. Adarmes, appellant's physician, and Dr. Estaris, a DMA for OWCP, disagree regarding the nature and extent of appellant's right lower extremity permanent impairment, the Board finds that a conflict in medical opinion exists.¹⁵ While both physicians utilized Table 16-3, Knee Regional Grid, of the A.M.A., *Guides* for the diagnosis of cruciate ligament injury, they differed on the class of diagnoses and whether that there was demonstrated right knee instability. As noted above, if there is a disagreement between the employee's physician and an OWCP physician, OWCP shall appoint a third physician, known as a referee physician or impartial

¹² 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

¹³ 20 C.F.R. § 10.321.

¹⁴ *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

¹⁵ *See L.E.*, Docket No. 20-1505 (issued June 7, 2021); *see also C.B.*, Docket No. 20-0258 (issued November 2, 2020).

medical specialist, who shall make an examination.¹⁶ Because the reports of Dr. Adarmes and Dr. Estaris are virtually of equal weight, appellant must be referred to an impartial medical examiner to resolve the existing conflict in the medical opinion evidence regarding the extent of the permanent impairment of her left lower extremity.¹⁷

On remand, OWCP shall refer appellant, along with the case record and SOAF, to an appropriate specialist for an impartial medical evaluation for a rating of permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding his additional schedule award claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 15, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ *Supra* note 14.

¹⁷ *D.W.*, Docket No. 21-0840 (issued November 30, 2021); *M.M.*, Docket No. 18-0235 (issued September 10, 2019).