

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

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V.D., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
IMMIGRATION & CUSTOMS )  
ENFORCEMENT, Jamaica, NY, Employer )

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**Docket No. 22-0123**  
**Issued: April 20, 2023**

*Appearances:*  
Aaron B. Aumiller, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On November 1, 2021 appellant, through counsel, filed a timely appeal from May 5 and October 20, 2021 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish continuing residuals or disability on or after December 22, 2011, causally related to her accepted January 17,

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

2001 employment injury; and (2) whether appellant has met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On February 14, 2001 appellant, then a 29-year-old detention enforcement officer, filed a traumatic injury claim (Form CA-1) alleging that on January 17, 2001 she injured her lower back and knees when she slipped on a greasy floor and grabbed a desk to prevent herself from falling while in the performance of duty. On May 15, 2001 OWCP accepted the claim for lumbar and thoracic radiculopathy, cervical sprain, and bilateral traumatic knee chondromalacia. It also authorized left knee arthroscopy, with two-compartment partial synovectomy, and lateral meniscal shaving, which was performed on November 15, 2001. OWCP paid appellant wage-loss compensation on the periodic rolls commencing July 14, 2001.

On July 29, 2011 OWCP prepared a statement of accepted facts (SOAF) and referred appellant to Dr. Stanley R. Askin, a Board-certified orthopedic surgeon for a second opinion evaluation to determine her current diagnoses and disability status.

In a report dated August 12, 2011, Dr. Askin reviewed appellant's history of injury, her history of medical treatment, and the SOAF. He conducted a physical examination and noted findings which included: negative Spurling's tests; no trapezial, paravertebral, or paracervical muscle spasms; no cervical tenderness; and full right shoulder range of motion. With regard to appellant's knees, Dr. Askin related that she had full bilateral knee range of motion, pain and tenderness to touch in an unusual pattern longitudinally oriented over the lateral aspect of the patella, no joint line tenderness, no effusion, ligament function intact, and negative Apley's test. He observed that appellant moved her neck better spontaneously than when tested for formal range of motion. Dr. Askin acknowledged her accepted diagnoses of lumbar and thoracic radiculopathy, cervical sprain, and bilateral traumatic knee chondromalacia and concluded that based on the lack of current objective physical findings that the accepted conditions had resolved without residuals or disability. He also concluded that appellant's posterior meniscal horn findings were age-appropriate imperfections for someone of her age and that her physical capacity was consistent with the aging process. Dr. Askin explained that, while she had continuing complaints of pain, there was no objective basis for a finding of disability. He concluded that no further medical treatment was necessary and that appellant could return to her date-of-injury position.

On September 14, 2011 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits due to her accepted lumbar and thoracic radiculopathy, cervical sprain, and bilateral traumatic knee chondromalacia. It found, based on Dr. Askin's report, that she no longer had disability from work and no medical residuals requiring further treatment. OWCP afforded appellant 30 days to respond. No response was received.

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<sup>3</sup> Docket No. 17-0838 (issued August 24, 2017); Docket No. 19-0979 (issued February 5, 2020).

By decision dated December 22, 2011, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. By decision dated July 11, 2012, OWCP's hearing representative affirmed the December 22, 2011 termination decision.

Appellant thereafter filed a series of reconsideration requests. By decisions dated October 18, 2012, March 14, 2014, and June 8, 2015, OWCP denied modification.

Appellant again requested reconsideration. By decision dated September 2, 2016, OWCP denied reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a). On March 1, 2017 appellant, through counsel, appealed the September 2, 2016 decision to the Board. By decision dated August 24, 2017, the Board found that OWCP had improperly denied appellant's request for reconsideration of the merits of her claim pursuant 5 U.S.C. § 8128(a).<sup>4</sup> The Board, therefore, set aside the September 2, 2016 decision and remanded the case for a merit review.

On remand, OWCP conducted a merit review and, by decision dated September 7, 2017, denied modification of its prior decision.

On September 7, 2018 appellant, through counsel, requested reconsideration. By decision dated October 1, 2018, OWCP denied modification.

On April 2, 2019 appellant, through counsel, appealed the October 1, 2018 decision to the Board.

By decision dated February 5, 2020, the Board affirmed OWCP's October 1, 2018 decision.<sup>5</sup> The Board found that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective December 22, 2011 based on the report from Dr. Askin, a second opinion physician. The Board also found that the medical reports submitted subsequent to the termination were insufficient to create a conflict in the medical opinion evidence or establish continuing residuals or disability due to the accepted conditions.

While the appeal was pending, OWCP received a June 6, 2016 report from Dr. Laura E. Ross, an osteopathic Board-certified orthopedic surgeon, who advised that review of a November 30, 2015 right knee x-ray, bilateral knee magnetic resonance imaging (MRI) scans dated February 3, 2012, and an August 2, 2015 right lower extremity MRI scan did not change her previous opinion expressed in her January 9 and August 5, 2015 reports. In her prior reports, Dr. Ross explained that appellant would likely require knee replacement in the future, secondary to her accepted chondromalacia patella, which was a form of post-traumatic arthritis, which was ongoing and deteriorating. She further noted that, while appellant did not currently require medical treatment, she would require future medical treatment. Dr. Ross also noted that appellant had ongoing physical limitations, with difficulty walking and sitting.

In an October 27, 2020 report, Dr. Joshua B. Macht, a Board-certified internist, noted that appellant was seen for a permanent impairment evaluation with regard to her January 17, 2001 employment injury. He recounted the medical treatment she had received following her injury.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

Dr. Macht related that appellant continued to complain of lower back pain radiating down to her bilateral knee area, intermittent bilateral knee and ankle numbness and tingling, bilateral knee pain, and intermittent tingling in her right wrist and ventral forearm. On examination, he observed lower cervical spine, lower lumbar spine, and bilateral lumbar paraspinal region tenderness, diminished sensation to light touch involving the left hand, and diminished sensation along the right wrist and forearm area. Motor strength of the upper and lower extremities were symmetric and intact. Dr. Macht provided range of motion findings of appellant's back, neck, and bilateral lower extremities. He discussed her diagnostic testing, noting that a January 19, 2012 electromyograph and nerve conduction velocity (EMG/NCV) study showed evidence of right L5-S1 chronic lumbosacral radiculopathy and that a March 28, 2013 EMG/NCV study showed evidence of right C5-6 cervical radiculopathy. Dr. Macht reported diagnoses of aggravation of right C6 cervical radiculopathy, bilateral L5 lumbar radiculopathy, and bilateral knee chondromalacia.

Dr. Macht referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>6</sup> and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*) and indicated that, under proposed Table 1 of *The Guides Newsletter*, the class of diagnosis (CDX) for mild sensory deficit in the right C6 radiculopathy due to her cervical radiculopathy resulted in a Class 1 impairment of the right upper extremity with a default value of one percent permanent impairment. He assigned a grade modifier for functional history (GMFH) of 1 due to her *QuickDASH* score. Dr. Macht reported that, according to Table 15-7 (Shoulder Range of Motion), page 406 of the A.M.A., *Guides*, this represented a grade modifier for physical examination (GMPE) of 4; however, this could not be used as it was 3 grades higher than appellant's impairment class. Thus, he found a Class 1, Grade C impairment which represented one percent permanent impairment of the right upper extremity due to her right C6 radiculopathy. Next, Dr. Macht indicated that, under Table 2 of *The Guides Newsletter*, the CDX for mild motor and sensory deficit at the bilateral L5 level due to appellant's lower back injury was a Class 1 impairment with a default value of one percent permanent impairment. He assigned a GMFH of 2 due to her lower limb questionnaire and calculated that she had two percent permanent impairment for mild sensory deficits and seven percent permanent impairment for mild motor deficits of each lower extremity, resulting in nine percent permanent impairment of each lower extremity due to mild motor and sensory deficits in her bilateral L5 distribution.

Dr. Macht also indicated that appellant had a history of bilateral knee chondromalacia due to the accepted January 17, 2001 employment injury. Using Table 16-3, page 509, the Knee Regional Grid, he related that her findings of bilateral meniscal injury represented a default value of two percent lower extremity permanent impairment. Dr. Macht referenced Table 16-6, page 516, regarding appellant's functional history of an American Academy of Orthopedic Surgeons (AAOS) Lower Limb Questionnaire score of 34 and assigned a grade GMFH of 2. He referenced Table 16-7, page 517, and found a GMPE of 1. Dr. Macht assigned no grade modifier for clinical studies (GMCS) as clinical studies were used to define her impairment rating. The net adjustment formula warranted movement one place to the right of the default value at Grade C to Grade D, for two percent permanent impairment of each lower extremity. Dr. Macht concluded that appellant had a total of 11 percent permanent impairment of each lower extremity for her bilateral knee chondromalacia and bilateral L5 lumbar radiculopathy and 1 percent permanent impairment

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

of each upper extremity permanent impairment as a result of her January 17, 2001 employment injury. He noted that she had reached maximum medical improvement (MMI) as of October 22, 2020.

On November 12, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On January 21, 2021 OWCP prepared a SOAF that listed appellant's accepted conditions as including a lumbar radiculopathy, thoracic radiculopathy, cervical sprain, and bilateral traumatic chondromalacia. It noted that her medical and compensation benefits had been terminated effective December 22, 2011 based on the opinion of Dr. Askin, a second opinion physician. Appellant's case record was thereafter referred to Dr. Michael M. Katz, a Board-certified orthopedic surgeon, serving as OWCP's DMA, for review.

In a report dated February 1, 2021 report, Dr. Katz agreed with Dr. Macht's impairment ratings, but recommended a referral for a second opinion evaluation to determine whether the ratable impairment findings by Dr. Macht were due to the work-related injury rather than the result of aging.

On February 5, 2021 appellant, through counsel, requested reconsideration.<sup>7</sup> Counsel contended that appellant continued to have residuals and disability on or after December 22, 2011 causally related to the accepted January 17, 2001 employment injury.

In a February 5, 2021 report, Dr. Macht noted his review of Dr. Askin's August 12, 2011 report and explained that patellofemoral joint chondromalacia could be diagnosed based on clinical findings such as grinding sensation, crepitation, pain, joint effusion, and/or x-rays. He reported that, while Dr. Askin mentioned bilateral knee pain and tenderness to palpation over the lateral patella aspect in his report, he failed to note whether appellant had any swelling, grinding, or the cause of the pain. Dr. Macht concluded that Dr. Askin's conclusions were inadequate due to this missing evidence, particularly the failure to mention whether she did or did not have crepitation. Appellant's physical examination findings were related as left knee infrapatellar tenderness, right knee tenderness along the lateral joint line, and mild bilateral crepitation. According to Dr. Macht, these findings were consistent for a diagnosis of bilateral chondromalacia. He diagnosed bilateral patellofemoral chondromalacia. Dr. Macht concluded that appellant had permanent disability and impairment due to her bilateral knee condition.

By decision dated May 5, 2021, OWCP denied modification of the October 1, 2018 decision.

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<sup>7</sup> Appellant, through counsel, requested reconsideration of the February 5, 2020 Board decision. However, OWCP has no jurisdiction to review a Board decision. The decisions and orders of the Board are final as to the subject matter appealed and such decisions and orders are not subject to review, except by the Board. See 20 C.F.R. § 501.6(d). Appellant had 30 days from the date of the Board's February 5, 2020 decision to file a petition for reconsideration with the Board. Therefore, the proper subject of modification is the October 1, 2018 OWCP merit decision. *Id.* at § 501.7. See also *J.D.*, Docket No. 20-0838 (issued February 24, 2021); *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *B.B.*, Docket No. 14-0464 (issued June 4, 2014).

By decision dated June 14, 2021, OWCP denied appellant's schedule award claim, finding the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

On July 12, 2021 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review with regard to the June 14, 2021 decision.

By decision dated October 20, 2021, the hearing representative affirmed OWCP's June 14, 2021 schedule award decision.

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

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing disability or residuals, on or after that date, causally related to the accepted injury.<sup>8</sup> To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.<sup>9</sup>

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>10</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.

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

The Board finds that appellant has not met his burden of proof to establish continuing residuals or disability on or after December 22, 2011, causally related to her accepted January 17, 2001 employment injury.

On prior appeal, the Board reviewed the medical evidence submitted prior to OWCP's October 1, 2018 decision. The Board found that OWCP properly terminated appellant's wage-loss compensation and medical benefits, as she no longer had residuals or disability due to her accepted January 17, 2001 employment injury. The Board further found that the medical evidence of record received after the December 22, 2011 termination decision, but prior to the October 1, 2018 decision, was insufficient to establish continuing residuals or disability on or after

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<sup>8</sup> See *G.H.*, Docket No. 20-0892 (issued July 9, 2021); *J.R.*, Docket No. 20-0211 (issued November 5, 2020); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>9</sup> *G.H.*, *id.*; *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *C.L.*, Docket No. 18-1379 (issued February 3, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>10</sup> 5 U.S.C. § 8123(a); *B.T.*, Docket No. 21-0388 (issued October 14, 2021); *G.F.*, Docket No. 20-0497 (issued May 20, 2021); *M.T.*, Docket No. 20-0677 (issued December 2020); *B.S.*, Docket No. 19-0711 (issued October 17, 2019); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994); see also *G.B.*, Docket No. 16-0996 (issued September 14, 2016) (OWCP improperly terminated appellant's wage-loss compensation and medical benefits as there was an unresolved conflict of medical opinion between her treating physician and a second opinion specialist).

December 22, 2011 due to the January 17, 2001 employment injury.<sup>11</sup> The Board notes that it is unnecessary to consider the evidence that was previously considered in its February 5, 2020 decision. Findings made in prior Board decisions are *res judicata*, absent further review by OWCP under section 8128 of FECA.<sup>12</sup>

OWCP continued to receive medical evidence following the October 1, 2018 OWCP decision.

In a June 6, 2016 report, Dr. Ross advised that she had reviewed appellant's November 30, 2015 right knee x-ray, bilateral knee MRI scans dated February 3, 2012, and an August 2, 2015 right lower extremity MRI scan and had not changed her opinion expressed in her previous January 9 and August 5, 2015 reports. In her prior reports, she explained that appellant would likely require knee replacement in the future, secondary to appellant's accepted chondromalacia patella, but that she did not currently require medical treatment. Dr. Ross also noted that appellant had ongoing physical limitations, with difficulty walking and sitting, but she did not address appellant's disability status. The Board, therefore, finds that she failed to address whether appellant had disability from work during the period claimed. Evidence that does not address appellant's dates of disability is of no probative value and insufficient to establish her claim.<sup>13</sup>

Appellant's treating physician, Dr. Macht, in a February 5, 2021 report, opined that she continued to have crepitation on examination, along with findings of left knee infrapatellar tenderness, right knee tenderness over the lateral joint line, which established that she had residuals and disability due to the accepted bilateral chondromalacia. He opined that she had permanent disability due her bilateral knee condition. Dr. Macht, however, failed to offer any medical rationale explaining how the accepted bilateral knee conditions resulted in continued disability from specific work activities on or after December 22, 2011. His February 5, 2021 report contains a conclusory opinion without the necessary rationale explaining how and why the employment injury, including his finding of crepitation, caused disability for work since December 2011.<sup>14</sup> Therefore, Dr. Macht's report is insufficient to establish continuing residuals disability.

As the medical evidence of record is insufficient to establish continuing residuals or disability on or after December 22, 2011, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>11</sup> *Supra* note 3.

<sup>12</sup> *G.H.*, Docket No. 20-0892 (issued July 9, 2021); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

<sup>13</sup> *See T.G.*, Docket No. 20-0121 (issued May 17, 2022); *M.L.*, Docket Nos. 18-1058 & 18-1224 (issued November 21, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> *C.E.*, Docket No. 19-0192 (issued July 16, 2019).

## LEGAL PRECEDENT -- ISSUE 2

The schedule award provisions of FECA,<sup>15</sup> and its implementing federal regulations,<sup>16</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>17</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>18</sup>

It is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of an employment injury.<sup>19</sup> OWCP's procedures provide that, to support a schedule award, the file must contain competent medical evidence, which shows that the impairment has reached a permanent and fixed state and indicates that the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.<sup>20</sup>

Neither FECA nor its implementing regulations provide for a schedule award for impairment to the back or to the body as a whole.<sup>21</sup> Furthermore, the back is specifically excluded from the definition of organ under FECA.<sup>22</sup> The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*) offers an approach to rating spinal nerve impairments consistent with sixth edition methodology. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures indicate that *The Guides Newsletter* is to be applied.<sup>23</sup> The Board has recognized the adoption of this methodology for rating extremity impairment, including the use of *The Guides Newsletter*, as proper in order to provide a uniform

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<sup>15</sup> 5 U.S.C. § 8107.

<sup>16</sup> 20 C.F.R. § 10.404.

<sup>17</sup> *Id.* at 10.404(a).

<sup>18</sup> 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).

<sup>19</sup> *J.P.*, Docket No. 21-0801 (issued December 22, 2021); *N.S.*, Docket No. 21-0508 (issued September 22, 2021); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>20</sup> *Supra* note 18 at Chapter 2.808.5 (March 2017).

<sup>21</sup> *J.P.*, *supra* note 19; *N.S.*, *supra* note 19; *K.Y.*, Docket No. 18-0730 (issued August 21, 2019); *L.L.*, Docket No. 19-0214 (issued May 23, 2019); *N.D.*, 59 ECAB 344 (2008); *Tania R. Keka*, 55 ECAB 354 (2004).

<sup>22</sup> *See* 5 U.S.C. § 8101(19); *see also J.P.*, *supra* note 19; *N.S.*, *supra* note 19; *G.S.*, Docket No. 18-0827 (issued May 1, 2019); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

<sup>23</sup> *Supra* note 18 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.



standard applicable to each claimant for a schedule award for extremity impairment originating in the spine.<sup>24</sup>

### **ANALYSIS -- ISSUE 2**

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

In his October 17, 2020 report, Dr. Macht provided appellant's physical and diagnostic examination findings. He opined that appellant had 11 percent permanent impairment of each lower extremity due to bilateral knee chondromalacia and L5 radiculopathy according to Table 16-3 on page 509 of the A.M.A., *Guides* and Table 2 of *The Guides Newsletter* and a one percent right upper extremity permanent impairment due cervical radiculopathy using Table 1 of *The Guides Newsletter*.

Dr. Katz, a DMA, reviewed Dr. Macht's report and concurred with his finding that appellant had one percent permanent impairment of the right upper extremity and 11 percent permanent impairment of each lower extremity. He recommended referral for a second opinion evaluation to determine whether the impairment findings by Dr. Macht were attributed to the accepted January 17, 2001 employment injury rather than the result of aging.

OWCP denied appellant's schedule award, finding that Dr. Macht's report was insufficient to establish that she had permanent impairment of a scheduled member or function of the body due to her accepted employment injury. It did not, however, refer her for a second opinion evaluation as recommended by the DMA.

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>25</sup> OWCP has an obligation to see that justice is done in a manner that will resolve the relevant issues in this case.<sup>26</sup>

The case will, therefore, be remanded for OWCP to refer appellant for a second opinion evaluation to determine the nature and extent of her permanent impairment. Following this and other such further development deemed necessary, OWCP shall issue a *de novo* decision regarding her schedule award claim.

### **CONCLUSION**

The Board finds that appellant has not established continuing disability or residuals on or after December 22, 2011, causally related to the accepted January 17, 2001 employment injury.

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<sup>24</sup> *J.P.*, *supra* note 19; *N.S.*, *supra* note 19; *E.D.*, Docket No. 13-2024 (issued April 24, 2014); *D.S.*, Docket No. 13-2011 (issued February 18, 2014).

<sup>25</sup> *See D.N.*, Docket No. 21-0591 (issued September 27, 2021); *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

<sup>26</sup> *See D.N.*, *id.*; *L.T.*, Docket No. 18-1405 (issued April 8, 2019); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

The Board further finds that the case is not in posture for a decision with regard to appellant's schedule award claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 5, 2021 decision of the Office of Workers' Compensation Programs is affirmed. The October 20, 2021 decision of Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with his decision of the Board.

Issued: April 20, 2023  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board