

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

D.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Detroit, MI, Employer**

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**Docket No. 22-0986
Issued: April 14, 2023**

Appearances:
Appellant, pro se
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 June 13, 2022 appellant filed a timely appeal from a March 24, 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 over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the March 24, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than 31 percent permanent impairment of her left lower extremity, for which she received a schedule award.

FACTUAL HISTORY

On November 7, 1996 appellant, then a 41-year-old mail processor, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left knee when she bent down to remove a jam from a lower shelf while in the performance of duty. OWCP accepted the claim for a left knee strain.

On September 8, 2009 appellant underwent a left total knee arthroplasty. On February 17, 2014 she underwent a left knee scar debridement and synovectomy, patellar tendon debridement, infrapatellar bursectomy, and a tendon and bursal debridement.

Appellant, on July 13, 2015, filed a claim for compensation (Form CA-7) for a schedule award. By decision dated September 11, 2015, OWCP denied her schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body.

On September 18, 2015 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. Following a May 24, 2016 telephonic hearing, by decision dated July 7, 2016, OWCP's hearing representative affirmed the September 11, 2015 decision.

In a report dated August 22, 2016, Dr. Catherine Watkins Campbell, who specializes in family medicine, noted that appellant appeared to weigh over 340 pounds and used a wheelchair. She advised that she was unable to measure range of motion (ROM) due to appellant's physical limitations. Using Table 16-3 on page 509 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*),³ Dr. Watkins Campbell found 13 percent left lower extremity impairment due to knee tendinitis. Alternatively, she found 67 percent impairment of the left lower extremity as a result of a class 4 total knee replacement according to Table 16-3 on page 511 of the A.M.A., *Guides*.

On October 5, 2016 appellant, through counsel, requested reconsideration of OWCP's July 7, 2016 decision. On December 19, 2016 OWCP advised that it would consider her reconsideration request as a request for a schedule award.

On December 4, 2017 Dr. Morley Slutsky, Board-certified in occupational medicine and serving as a district medical adviser (DMA), reviewed Dr. Watkins Campbell's report and determined that she had not provided valid ROM findings. He recommended a second opinion examination.

³ A.M.A., *Guides* (6th ed. 2009).

On March 1, 2018 OWCP referred appellant to Dr. Jiab H. Suleiman, an osteopath, for a second opinion examination regarding the extent of any permanent impairment of appellant's left lower extremity.

In a report dated March 19, 2018, Dr. Suleiman discussed appellant's history of injury and noted that she was in a wheelchair. He related that she "refuses to stand at all or even attempt to stand, she is morbidly obese and has significant pitting edema in her lower extremities." Dr. Suleiman indicated that appellant would not attempt knee flexion past 30 degrees but had full extension with no signs of instability in the left knee. He diagnosed left knee osteoarthritis, a left knee contusion/sprain, and a history of osteoarthritis. Dr. Suleiman opined that appellant's symptoms failed to correspond to objective findings and that he could not rate her impairment as she was malingering.

Dr. Slutsky, on April 22, 2018, found that appellant had 25 percent permanent impairment due to a class 2 total knee replacement according to Table 16-3 on page 509 of the A.M.A., *Guides*. He determined that grade modifiers were not applicable based on the lack of positive and objective findings and as clinical studies had been used to identify the diagnosis class.

On August 10, 2018 OWCP advised Dr. Slutsky that it had not accepted appellant's left knee replacement as authorized and requested that he rate the impairment based on the accepted condition of left knee sprain.⁴

On September 20, 2018 OWCP again referred appellant to Dr. Suleiman for a second opinion examination.

In an October 12, 2018 report, Dr. Suleiman diagnosed stable knees after bilateral knee arthroplasties. He measured full extension and flexion from 85 to 90 degrees from a seated position. Dr. Suleiman found no tenderness, instability, or effusion but mild stiffness following a total left knee arthroplasty. He noted that appellant did not try to stand or walk even though her knee was stable. Dr. Suleiman found that she had sustained a sprain that "might have aggravated her knee arthritis." Using the diagnosis-based impairment (DBI) impairment rating method, he found that appellant had a class 2 impairment for the class of diagnosis (CDX) of total knee arthroplasty. Dr. Suleiman applied a grade modifier for functional history (GMFH) of 3 and found a final lower extremity impairment of 25 percent. In an undated supplemental report, he opined that appellant had sustained an aggravation of preexisting osteoarthritis resulting in the need for a left total knee replacement due to the accepted November 7, 1996 employment injury.

On March 29, 2019 OWCP expanded its acceptance of the claim to include a precipitation of osteoarthritis of the left knee.

On April 12, 2019 Dr. Slutsky found a class 3 impairment for the CDX of left total knee arthroplasty based on appellant's mild loss of ROM, which yielded a default value of 37 percent according to Table 16-3 on page 511. He applied a GMFH of one as she had no antalgic gait or positive Trendelenburg. Dr. Slutsky further found a grade modifier for physical examination (GMPE) of 0 as she had no tenderness or effusion and determined that a grade modifier for clinical

⁴ In an August 23, 2018 response, Dr. Slutsky requested medical records for review.

studies (GMCS) was inapplicable. After applying the net adjustment formula, he found a net adjustment of negative two and a final left lower extremity impairment of 31 percent. Dr. Slutsky determined that appellant had reached maximum medical improvement (MMI) on October 12, 2018.

In an August 31, 2019 addendum, Dr. Suleiman reviewed Dr. Slutsky's April 12, 2019 report and concurred with his findings.

By decision dated December 5, 2019, OWCP granted appellant a schedule award for 31 percent permanent impairment of the left lower extremity. The period of the award ran for 89.28 weeks from October 12, 2018 to November 8, 2019.

On January 20, 2020 Dr. Watkins Campbell reviewed Dr. Suleiman's August 3, 2019 report and the report from the DMA. She questioned whether he had documented information about appellant's gait and whether he could adequately determine her knee stability. Dr. Watkins Campbell advised that her 2016 examination supported that appellant 67 percent permanent impairment of the left lower extremity due to her total knee replacement.

On March 18, 2021 appellant filed a CA-7 form requesting an increased schedule award.

In a report dated January 3, 2022, Dr. Watkins Campbell found that appellant's condition had improved since the time of her June 2016 evaluation. She measured 85 degrees of flexion, 0 degrees of flexion contracture, and 7 degrees valgus of the left knee with no instability. Dr. Watkins Campbell a class 3 impairment for the CDX of total knee replacement using Table 16-3. She applied a GMFH of 4, a GMCS of 0, and found a GMPE not applicable, for a net adjustment of negative 3 and a left lower extremity impairment of 31 percent. Dr. Watkins Campbell concluded that appellant had no increase in impairment from the previous award of 31 percent.

On February 20, 2022 Dr. Herbert White, Jr., Board-certified in occupational medicine and serving as a DMA, reviewed the evidence and identified a class 3 impairment for the CDX of total knee replacement using Table 16-3 on page 511. He applied a GMFH of three due to appellant's use of a wheelchair with the ability to ambulate, a GMPE of one for a valgus deformity, and a GMCS of two for an implant in good condition. Dr. White found that application of the net adjustment formula yielded a downward adjustment of 3 for a total left lower extremity impairment of 31 percent. He noted that appellant had previously received a schedule award for 31 percent permanent impairment of the left lower extremity and thus was not entitled to an additional schedule award. Dr. White further found that she had 10 percent permanent impairment due to loss of ROM but determined that the A.M.A., *Guides* did not provide for rating an impairment based on ROM as an appropriate alternative method.⁵

By decision dated March 24, 2022, OWCP denied appellant's request for an increased schedule award.

⁵ The A.M.A., *Guides* at 497 provides that the DBI impairment method is the primary method used to evaluate the lower limb.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁶ and its implementing federal regulations,⁷ 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 loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.⁸ 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.⁹

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's *International Classification of Functioning Disability and Health (ICF): A Contemporary Model of Disablement*.¹⁰ Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by a GMFH, a GMPE, and GMCS.¹¹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹² Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.¹³

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the percentage of permanent impairment using the A.M.A., *Guides*.¹⁴

⁶ *Supra* note 1.

⁷ 20 C.F.R. § 10.404.

⁸ For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

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

¹⁰ A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3.

¹¹ *Id.* at 494-531.

¹² *Id.* at 411.

¹³ *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

¹⁴ *Supra* note 8 at Chapter 2.808.6(f) (March 2017); *B.B.*, Docket No. 18-0782 (issued January 11, 2019).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish greater than 31 percent permanent impairment of her left lower extremity, for which she received a schedule award.

OWCP referred appellant to Dr. Suleiman for a second opinion examination. In an October 12, 2018 report, Dr. Suleiman found that she had 25 percent permanent impairment of the left lower extremity due to her left total knee replacement. On April 12, 2019 Dr. Slutsky, a DMA, reviewed Dr. Suleiman's report and found a class 3 impairment for the CDX of total knee replacement according to Table 16-3 on page 511 of the A.M.A., *Guides*. After applying grade modifiers, he found a left lower extremity impairment rating of 31 percent. On August 31, 2019 Dr. Suleiman reviewed Dr. Slutsky's report and concurred with his findings. Based on their opinions, OWCP awarded appellant a schedule award for 31 percent permanent impairment of the left lower extremity.

Subsequently, in a January 20, 2020 report, Dr. Watkins Campbell noted that in 2016 she had found that appellant had a class 4 impairment due to her total knee replacement for a 67 percent permanent impairment of the left lower extremity. She did not, however, address the extent of appellant's current impairment based on the most current findings, and thus her report is of little probative value.¹⁵

In a January 3, 2022 impairment evaluation, Dr. Watkins Campbell found that appellant had a class 3 total knee replacement under Table 16-3, which yielded a default impairment rating of 37 percent. She applied a GMFH of four, a GMCS of zero, and found a GMPE not applicable, which after application of the net adjustment formula yielded a left lower extremity impairment of 31 percent.¹⁶

On February 20, 2022 Dr. White, a DMA, reviewed Dr. Watkins Campbell's January 3, 2022 report. He found a GMFH of three, a GMPE of one, and that a GMCS was not applicable. Dr. White utilized the net adjustment formula and found 31 percent impairment of the left lower extremity.¹⁷

As discussed, appellant previously received a schedule award for 31 percent permanent impairment of the left lower extremity due to her total knee replacement. When the prior impairment is due to a previous work-related injury and a schedule award has been granted for such prior impairment, the percentage already paid is subtracted from the total percentage of

¹⁵ See *T.N.*, Docket No. 18-0464 (issued September 4, 2018).

¹⁶ Utilizing the net adjustment formula discussed above, $(GMFH-CDX) + (GMCS-CDX)$ or $(4-3) + (0-3) = -2$, yielded an adjustment of negative 2.

¹⁷ Using the net adjustment formula, $(GMFH-CDX) + (GMPE-CDX)$ or $(3-3) + (1-3) = -2$, yielded an adjustment of negative 2.

impairment.¹⁸ Thus, Dr. White properly found that appellant was not entitled to an increased schedule award.

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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish greater than 31 percent permanent impairment of her left lower extremity, for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 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

¹⁸ 20 C.F.R. § 10.404(d); *see A.R.*, Docket No. 21-0346 (issued July 1, 2021); *D.P.*, Docket No. 19-1514 (issued October 21, 2020); *S.M.*, Docket No. 17-1826 (issued February 26, 2018).