United States Department of Labor
Employees' Compensation Appeals Board

P.D., Appellant	)	
and	)	**Docket No. 23-0004**
	)	**Issued: December 14, 2023**
U.S. POSTAL SERVICE, BELLEVUE POST OFFICE, Bellevue, OH, Employer	)	

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 October 4, 2022 appellant filed a timely appeal from an April 26, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than 10 percent permanent impairment of his right lower extremity, for which he previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the April 26, 2022 decision, appellant submitted additional evidence to OWCP. 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*.

FACTUAL HISTORY

On July 1, 2019 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 1, 2019 he experienced right knee pain and swelling when his knee buckled and he fell to the ground while delivering mail in the performance of duty. He stopped work on July 1, 2019. OWCP accepted appellant's claim for right knee sprain. By decision dated September 3, 2019, it expanded the acceptance of his claim to include right knee medial meniscus tear. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective August 16, 2019, and on the periodic rolls, effective March 1, 2020. On July 18, 2020 appellant returned to work.

On November 2, 2021 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated December 16, 2021, OWCP requested that appellant's treating physician submit an impairment evaluation in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3] It afforded him 30 days to submit additional medical evidence in support of his schedule award claim.

OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Khaled J. Saleh, a Board-certified orthopedic surgeon, for a second opinion examination in order to determine the status of his work-related injuries and whether he had sustained permanent impairment of a scheduled member or function of the body due to his accepted July 1, 2019 employment injury in accordance with the A.M.A., *Guides.*

In a March 14, 2022 report, Dr. Saleh reviewed appellant's history of injury and noted the accepted conditions of right knee sprain and meniscal tear. Upon examination of appellant's right knee, he observed minor joint line tenderness on the posteromedial aspect along the tibial plateau. Dr. Saleh noted that range of motion (ROM) testing was conducted three times and demonstrated flexion to 100, 105, and 110 degrees. He diagnosed right knee strain and right medial meniscus tear. Dr. Saleh referred to the sixth edition of the A.M.A., *Guides* and utilized the ROM rating method to determine that appellant had 10 percent right lower extremity permanent impairment for passive extension and 20 percent right lower extremity permanent impairment for passive flexion, which resulted in a total of 30 percent permanent impairment of the right lower extremity. He also utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 16-3 (Knee Regional Grid), page 509, the class of diagnosis (CDX) for meniscal injury resulted in a Class 1 impairment with a default value of two percent permanent impairment. Dr. Saleh assigned a grade modifier for functional history (GMFH) of 1 and a grade modifier for physical examination (GMPE) of 2 based on a finding of muscle atrophy of 2.2 cm. He found that a grade modifier for clinical studies (GMCS) was not applicable. Dr. Saleh calculated that appellant had +2 adjustment, which resulted in three percent permanent impairment of the right lower extremity. He reported a date of maximum medical improvement (MMI) of September 24, 2021.

[3] A.M.A., *Guides* (6th ed. 2009).

In an April 13, 2022 report, Dr. Todd Fellars, a Board-certified orthopedic surgeon, serving as district medical adviser (DMA), reviewed the medical record, including Dr. Saleh's March 14, 2022 second opinion report, and noted that appellant's claim was accepted for right knee medial meniscus tear. He referred to the A.M.A., *Guides* and utilized the DBI rating method to find that, under Table 16-3 (Knee Regional Grid), page 509, the CDX for meniscal injury was a Class 1 impairment with a default value of two. Dr. Fellars assigned a GMFH of 1 a GMPE of 2 due to motion loss and atrophy and a GMCS of 2. He utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 1) + (2 - 1) + (2 - 1) = +2, which resulted in three percent permanent impairment of the right lower extremity. Dr. Fellars also incorporated appellant's loss of ROM and referenced Table 16-23 (Knee Motion Impairment), page 549, to find that appellant's permanent impairment increased to 10 percent due to loss of extension. He concluded that appellant had 10 percent permanent impairment of the right lower extremity. Dr. Fellars reported a date of MMI of March 14, 2022. He explained that he disagreed with Dr. Saleh's ROM impairment rating because there should be no impairment for loss of extension under the A.M.A., *Guides*.

By decision dated April 26, 2022, OWCP granted appellant a schedule award for 10 percent permanent impairment of the right lower extremity. The award ran for 28.8 weeks from March 14 through October 1, 2022, based on the opinion of the DMA.

LEGAL PRECEDENT

The schedule award provisions of FECA[4] and its implementing regulations[5] 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

[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* Chapter 3.700.2 and Exhibit 1 (January 2010).

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

net adjustment formula is applied using the 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]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 10 percent permanent impairment of his right lower extremity, for which he previously received a schedule award.

In a March 14, 2022 report, Dr. Saleh, OWCP's referral physician, utilized the DBI rating method and determined that under Table 16-3 (Knee Regional Grid) of the A.M.A., *Guides*, appellant had a Class 1 impairment with a default value of two. He assigned a GMFH of 1 and a GMPE of 2, which resulted in three percent permanent impairment of the right lower extremity. Dr. Saleh also utilized the ROM rating method and determined that, under Table 16-23, appellant had a total of 30 percent permanent impairment of the right lower extremity due to loss of flexion and extension.

In an April 13, 2022 report, Dr. Fellars, the DMA, reviewed Dr. Saleh's impairment rating and concurred with his finding that appellant had three percent permanent impairment of the right lower extremity. He determined that under Table 16-3 (Knee Regional Grid), appellant had a Class 1 impairment with a default value of two2 percent. Dr. Fellars assigned a GMFH of 1, a GMPE of 2, and a GMCS of 2 and calculated that the net adjustment formula resulted in +2, which resulted in three percent permanent impairment of the right lower extremity. He also incorporated appellant's loss of ROM to find that according to Table 16-23 (Knee Motion Impairment), page 549, appellant had 10 percent permanent impairment of the right lower extremity for loss of flexion. Dr. Fellars explained that he disagreed with Dr. Saleh's ROM impairment rating because Table 16-23 did not provide for impairment due to loss of extension. The Board has reviewed the DMA's rating, and finds that he properly applied the appropriate tables and grading schedules to the findings from Dr. Saleh's report, pursuant to the A.M.A., *Guides*.[12] OWCP, therefore, properly relied on Dr. Fellars, as he provided a well-rationalized

[9] *Id.* at 515-22.

[10] *Id.* at 23-28.

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

[12] *See A.S.*, Docket No. 22-0930 (issued January 19, 2023); *see also R.S.*, Docket No. 21-0833 (issued January 25, 2022).

report and opinion on appellant's right lower extremity permanent impairment, which was derived in accordance with the standards of the sixth edition of the A.M.A., *Guides*.[13]

As the medical evidence of record is insufficient to establish greater than 10 percent permanent impairment of the right lower extremity, the Board finds that appellant has not met his 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than 10 percent permanent impairment of his right lower extremity, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 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

[13] *See C.J.*, Docket No. 22-0261 (issued May 17, 2023).